

THE 1895 555

CONSTITUTION O F *GERMANY.*

By Way of **QUESTION and ANSWER.**

Wherein is contain'd (together with explanatory Notes) a succinct, historical Account of the CONSTITUTION in General, and its Principles, *viz.*

The Imperial Capitulations. The Golden Bull. The Recesses of the Empire. The Public Peace, the Religious Peace, and the Peace of *Westphalia*. Of the Relation private Laws, or the Civil Law, have to the Constitution. Of the Election and Coronation of the Emperor. Of his Rights with respect to the whole Empire, and his peculiar Prerogatives. How a Vacancy may happen in the Imperial Throne. Of the Empress. Of the Election of King of the *Romans*. Of the Vicars of the Empire. Of the States of the Empire, and of the Matricula's. Of the peculiar Privileges of the Electoral College. Of the Territorial Jurisdiction of the States. Of the Succession to the immediate Fiefs. Of the Guardianship of illustrious Persons. Of the Investiture of the Fiefs. How the Jurisdiction of the States may be forfeited. Of the General Diets. The ordinary and extraordinary Deputations of the Empire. Of some particular Meetings. Of the Circles of the Empire, and of the circular Diets. Of the Execution of the Decrees of the General Diet. Of the Courts of Judicature, *viz.* that of *Aufrage*, the Imperial Chamber, the Aulic Council, and the *Rotweil* Court. Of the Ceremonial Part of the Constitution. Of the Form of Government in the Empire, and of the Interest and Policy of *Germany*.

Very necessary for such as would make the Tour of *Germany*, or thoroughly understand the public Affairs of the Empire, in the present Critical Conjuncture.

By WILLIAM MACBEAN, M. A.

L O N D O N:

Printed for JOSIAH GRAHAM, over-against St. Martin's Church in the Strand; and M. COOPER, at the *Globe* in Pater-noster Row. 1743.

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ИОИТУТИЗИО

GERMANY

BAWAG OF OBERÖSTERREICH AND GERMANY



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THE P R E F A C E.

*I*N order to form an adequate Idea of the public Affairs of any Country, and whatsoever else is connected with them, it is absolutely necessary, that one be well acquainted with the Constitution of it. The design of the following small Treatise is to give the Constitution of Germany, a Country, not only the most considerable in Europe, as it has furnish'd it with most of its present Sovereigns, but at this Critical Juncture (when the Eyes of all the World are turn'd upon it) the Scene of such Transactions as are likely to determine the Fate of the Liberties and Balance of Power in Europe.

The Plan, upon which this little Treatise is form'd, is taken from M. Brunneman's *Jus Publicum Germaniae*; in prosecuting which, Care has been taken to avoid throughout all Partiality either with respect to the Head, or any particular Member of the Germanic Body: And very considerable Improvements and Additions down to the present Times have been made to it by an ingenious Friend (to whom I

The P R E F A C E.

here pay my public Acknowledgements, that ought
acquainted with the Affairs of Europe.

It may, therefore, it is bumbly presump'd,
be no improper Companion for such as would
travel into Germany, or such as have any Share
in the Councils and public Administration of
Great-Britain, with which the Affairs of Ger-
many are so nearly connect'd. We have
taken Care to accommodate the Subject to every
Capacity; for which End the Form into which
it is put may not be altogether unserviceable: And
that as the learned and curious Reader may, it
is hop'd, find some Entertainment; in like
Manner, may even the Ladies too, who would
fain be acquainted with the Subject of it:
And (with all due Submission to the better
Judgment of such as have the Inspection of the
Education of our Youth both in public and
private,) it may not be altogether unserviceable
to put this small Treatise into the Hands of
their Pupils, in order to give them a distinct
Notion of the Government and public Affairs
of Germany, at least such among them as
either by their high Birth or Capacity may in
the future Part of their Lives be rais'd to
any public Stations.

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BOOK

BOOK I.

CHAP. I.

Of the Constitution of the Roman-German Empire in General.

GENERAL POSITIONS.

1.  **H**E CONSTITUTION of Germany, (above all the other Countries, of whose Constitution we have but pretty superficial Accounts, and that oftentimes not without Hazard to the Authors of them) has furnish'd Matter for diffuse and those remarkable Treatises; as there are different Rulers of different Ranks and Conditions therein, who have a Share in the Government, whose respective Interests do freely permit and even require writing about it.

2. **Charlemagne* in the Year of Christ 800, was the first who restor'd the Title and Right of the *Roman* Emperor in the West.

3. Under *Otto* the Great an Accession of the Kingdom of *Lombardy* was by a perpe-

* *Charles the Great*, whom, in Imitation of the French, we shall all along call *Charlemagne*.

tral League made to the Kingdom of *Germany*, (which before had been lawfully disjoined from *France*, and govern'd by its own Kings and Laws) as also of a Title and Right over the Remains of the *Roman Empire* in the West.

4. But *Otto's Successors*, being by the Intrigues of the Popes of *Rome*, tir'd out with the Commotions in *Italy*, did not always, as they justly might, exert the Effects of their direct Dominion over *Italy*, but were often content with a Right and Dominion over the Kingdom of *Germany*.

Question I.

WHAT do you call the *Constitution* of the Roman-German Empire?

1. The public Acts or conventional Laws and Observances (either between the Head and Members of the Empire, or between the Members only) which regard the political State of *Germany*, its Government and Conservation.

Quest. 2. What do you call the public Jurisprudence of *Germany*?

1. It is the Knowledge of the Constitution of the Roman-German Empire; and it consists in a Dexterity or Skill of understanding and properly applying the public ^{*} Con-

* Or fundamental Laws of the *Roman Empire*; vid. the whole second Chapter.

ventions in *Germany*, and the Affairs connected therewith, to the common Tranquillity and Happiness of the *Roman Germanic Body*.

Q. 3. But, in what, pray, are the Laws or the public Constitution of *Germany* different from the general Law of Nations?

A. All the Difference between the General Law of Nations and any particular public Constitution of a Kingdom lies here, namely, that the Law of Nations shows what is just and right by Virtue of the Law of Nature, in the Government of every State; and what there is necessary to keep up the Connection between the Rulers and their Subjects in general: But the peculiar Constitution of a Country shows what is over and above agreed upon in each State, as to the Exercise and Restriction of the Sovereign Authority.

Q. 4. Have not other Countries too their particular Constitution?

A. Yes: In such Countries where the States have a Share in the Sovereign Authority, and some Influence upon the Exercise thereof, as is the Case in *England* and *Poland*.†

* Now apply this to the public Constitution of *Germany*; and you have the exact Answer to your Question.

† *Cbalkoski* in his *Jus publicum Regni Poloniarum* has given us the Constitution of *Poland*; and *Chamblerlain* has, in some Measure, given us that of *England*, tho' not under the same Title, yet to the same Purpose, in his *Present State of England*.

Q. 5. But what is the Reason that the Constitutions of *Spain*, *Sweden*, *France*, *Denmark* and *Muscovy* have not been publish'd?

A. Because in these Countries the States are at this Day quite excluded from having any Share in the public Administration, or at least are look'd upon by the Public to be so. So that the arbitrary Power of the Kings, and the passive Obedience of the Subjects, make up the Whole of the Constitution. As to *Sweden*, it is not long, since it had arbitrary Rulers; therefore, for ought we know, there is not hitherto much publish'd about their public Constitution.

Q. 6. What therefore, may the Reason be that the Constitution of *Germany* is so freely treated on?

A. As in so vast a Body politic, as *Germany*, the States have had a Share in the Government time out of Mind, it has therefore been found necessary to distinguish and fix with the greater Accuracy the several Rights belonging to the Head and Members. And the more unsettled the Authority is between the Person, who represents the Head in a Body politic, and between the States thereof, so much the greater Necessity there is of pointing out, and showing the different Rights that belong to each, and that Measure

sure of necessary Counterpoise they have on each other.

Q. 7. But how does the Constitution of a Country differ from its Policy.*

A. It is the Business of the Constitution of a Country to give each constituent Part of the Community its due Rights, and in every public Act of Government to maintain the Justice that results therefrom. But Policy is that prudent careful way of acting, to the Purposes of the common Welfare, required over and above what the Constitution demands.

Q. 8. Has the Constitution of *Germany* been always the same it is at this Day?

A. What it was from the beginning of the *Teutons* till the Reign of the *Franks*, and from thence down to *Charlemagne*, is not so evident, nor does the knowing this signify much towards coming at a more solid Insight into the Constitution at this Day; as but little Light can in this Case be borrow'd from History, from the time of *Charlemagne* down to *Lewis King of Germany*, and from thence down to *Otto the Great*; only that a more arbitrary Sort of Government (but still without quite excluding the Advice of the States) was observ'd down to the time of *Conrad I.* under whom began the Period of *Fiefs* and of *Territorial Jurisdiction*, which

* Or, Political Prudence.

afterwards underwent various Fates, till it was entirely settled by the Peace of *Westphalia*.

Q. 9. Who was the first that restor'd the *Roman Empire* in the West?

A. *Charlemagne*, who in the beginning of the Eighth Century, after having widely extended the Kingdom of the *Franks*, had under the Title of the *Roman Empire* united *Italy* to the Kingdom of the *Franks*.

Q. 10. Was not *Charlemagne* a Native of *Germany*?

A. This is commonly wont to be so strenuously asserted, as if otherwise that idle Dispute with the *French* Writers, as to the Pretensions of *France* to the Empire of *Germany*, were quite given them-up. But tho' it should be granted them, that *Charlemagne* was rather a *French-Frank*, than a *German- or Franconian-Frank*; yet for all that, *France* has no just Pretensions to the Empire; for, after *Charlemagne's* Death, *Germany* became parted from *France* (with which it had been united under the same Ruler, *Charlemagne*, although for all that it had never been dependant on *France*, no more than *Scotland* is dependant on *England*, though governed by the same King and united to it) and was govern'd by its own Sovereign *Lewis King of Germany*, nor was it ever afterwards a Part of *France*.

Q. 11. Who translated the Imperial Dignity to the *Germans*?

A. The

A. The translating the Imperial Dignity to the *Germans* is to be ascrib'd to *Otto the Great*, who, after entring into a just and solemn Convention with the Bishop (commonly call'd *Pope*) and with the Senate and the People of *Rome*, did by a perpetual League unite the Western Empire to *Germany*; so that whoever was lawfully created King of *Germany*, and consequently King of *Italy*, was likewise *ipso facto* (without being a-new elected by the *Romans*) to enjoy the Imperial Dignity, the Sovereignty over *Rome* and over the Remains of the Western Empire. Which League is, tho' somewhat mutilated, inserted in * the Canon Law.

Q. 12. Is the Republic of *Germany* properly call'd the *Roman Empire*?

A. *Germany* is justly denominated the *Roman Empire*, on account of its Right and Title to the Remains thereof.

Q. 13. From what time did the Kingdom of *Germany* also take the Title of *Roman Empire*?

A. Some conjecture, that the Emperor and the States of the Empire at length thought proper to take this Title in the XI. Century. Others contend, that it was in use in *Charlemagne's* time; and that to this are referable the Diploma's mentioned by *Mabillon*.)

* Can. XXIII. Distinct. LXIII.) (B. 2. c. 3.
de re diplomatica.

Yet

Yet the constant Use of it is to be traced as far back as *Otto the Great*, who, under the Title of Emperor and *Roman Empire*, comprises whatever the Empire of *Germany* comprehended at that time. But *Maximilian I.* added a new Title, namely that of King of *Germany*, in order to point out, that the Kingdom of *Germany* was a distinct thing from the Remains of the *Roman Empire*, tho' under one and the same Ruler, who is commonly called **EMPEROR**.

Q. 14. But would it not have been more glorious to have taken the Title of *German* than *Roman Emperor*?

A. From the time of *Otto the Great*, the *Germans* might very justly, on account of their subduing *Rome*, and also acquiring a Right to the Remains of the Western Empire, have prefer'd their own Titles to all others; or under that of Emperor of *Germany* have applied the Imperial Title to all the rest of their Dominions. But the superstitious Veneration had in those Days for the *Roman Name*, was doubtless the Reason, that the *Germans* prefer'd the fixing the Imperial Title to the conquer'd Country rather than to their own native Country.

Q. 15. Did not the Empire of *Germany* comprise more Provinces formerly than it does at this Day?

A. Yet

A. Yes. For, *Conringius** does solidly treat of the Right and Pretensions of the Empire of *Germany* to the Kingdom of *Arles* and to *Provence* and *Dauphiné* compris'd therein, to *Savoy* and *Piedmont*, to the *Lesser Burgundy*, the Kingdom of *Lorrain*, *Switzerland*, the Kingdom of *Lombardy*, *St. Peter's Patrimony*, and some other Provinces. But by the Intrigues of the Popes there was but little use made of the Right of Dominion the Empire had over *Italy* and other Provinces for some Ages; only that by the Success of the *Austrian*, then Imperial, Arms in *Italy*, in Queen *Anne*'s time, the Effects of the direct Dominion of the Empire of *Germany* over the Kingdom of *Lombardy*, *St. Peter's Patrimony*, *Liguria*, *Tuscany*; and in short, over almost all the Provinces of *Italy*, began again to be exerted, of which we had an Instance in the putting the Duke of *Mantua* to the BANN of the Empire, because *Mantua* and most of the *Italian* Principalities are Fiefs of the *Roman* Emperor to this Day.

Q. 16. What Helps are requisite in studying the Constitution of *Germany*?

A. The following, viz. 1. An Acquaintance both with the sacred and profane History of the *German* State, from the time of the ^b*CAROLINGI*, at least from that of *Con-*

* *De Finibus Imperii.* (a) *Regnum Arelatense.*
(b) i. e. *Charlemagne* and the Kings of *Germany*, who were of his Family.

Part I. 2. With Chronology. 3. With the Geography of *Germany* and the adjacent Countries, which formerly belong'd to it. 4. With the Genealogy of the Emperors and the States of *Germany*. 5. and lastly with Heraldry.*

* All which, in as far as they are assisting and ornamental to the Knowledge of the Constitution of *Germany*, may be learn'd from the respective Sciences, as is shown at large in Mr. Brunnemann's *Diff. I. de Fæderibus Principum Imperii cum exteris*, as also by Racbettius in *Otio Noviomagensi*, or in *Introductione ad Jus publicum Neomagi*, publish'd by himself, who was at that time Envoy from *Holstein* at the Congress at *Nimegen*.



CHAP. II.

Of the proper Principles of the Constitution, viz. the fundamental Laws of the Empire, and their Nature.

GENERAL POSITIONS.

1. **T**HE Constitution of *Germany* is altogether conventional.
2. The Nature of all Compacts is alter'd, if the thing agreed on does not remain in the same State.
3. The more ancient Laws of the Empire are to be explain'd by those of later Date, which imply a different State of the Empire.
4. The

4. The Speeches, Memorials, &c. of the Princes and their public Ministers in the General Diets are no Part of the public Laws.

Q. 1. What do you call the fundamental Laws of *Germany*?

A. The public Acts or Conventions that relate to the State of the *Germanic* Body and its Rulers.

Q. 2. What is the first beginning of these Laws?

A. Their first Beginning (from the *Genius* of the *Teutons*, a Nation always but little inclined to the arbitrary Government of one single Person) falls in with the Time, when the greatest Part of the People of *Germany* united into one Body, of which we may reckon two remarkable Epocha's; the one under *Clodovæus* the Great; the other under *Charlemagne*, after whose Death, and upon the Division of the *Caroline Empire*, * the Princes and Lords in the *German* Commonwealth did in Process of time (but especially under *Lewis King of Germany*) show and actually perform their Design of having a Share in the Sovereign Authority.

Q. 3. What was the Nature of the fundamental Laws of this Age?

* i. e. The many and vast Dominions possess'd by *Charlemagne* and his Posterity in *Germany*, mention'd in the 14th Question of the preceeding Chapter.

A. They

A. They, doubtless, consisted in some tacit Agreement or Observance, that the principal Persons in the Commonwealth should not be excluded from the General Diets and from having a Share in the Sovereign Authority?

Q. 4. Whence do you prove that ancient Liberty of the States?

A. That the Lords, both Ecclesiastic and Secular, were summon'd to the General Diets, and the public Laws enacted with their Consent, may be sufficiently prov'd from the *Salic Law*, the Laws of the *Alle-manns* and *Bavarians*, and those of the *Franks* call'd *CHAPTERS* (as we have them collected by *Baluzius*, *Lindenbrogius*, and others)* as also from the ancient Observance of the Empire.

Q. 5. What do you call the Observance of the Empire?

A. A tacit Agreement, that has been long in use between the Head and the Members of the Empire, or sometimes between the latter only, whereby are determin'd divers Affairs that relate to the whole Empire or to the States, as also the manner of transacting these Affairs.

Q. 6. Are there not written fundamental Laws, besides this Observance of the Empire?

* To which add *Caeceius* in his *Jurisprudentia publica*, c. 8. § 8.

A. As the State of the Empire has been often changed, it also requir'd a different Method of acting. Hence, besides the Observance of the Empire, that has often been alledged on both Sides (and which oftentimes is not sufficiently determin'd) a great many written Conventions under various Denominations have been superadded, which at this Day constitute the public Laws of Germany.

Q. 7. What are the chief public written Laws?

A. I. The Capitulations of elder Date, as also the Imperial Capitulations of later Date.

II. The Golden Bull of the Emperor *Charles IV.*

III. The *Recesses* of the Empire (as they are call'd) which are made in the General Diets.

IV. The Public Peace, the Religious Peace, and the Peace of *Westphalia*.*

Q. 8. How are these Laws made in the Empire?

A. By Way of Compact and Convention; as the States have a Share in the Government in Conjunction with the Emperor, which appears plainly from all the Preambles to the Capitulations from *Charles V.* down to the present Emperor *Charles VII.*

* As we meet with Encouragement from the Public, we may gradually translate these Laws, as Supplements to this little Treatise.

Q. 9. But how can this be reconcil'd with the high Style the Emperor uses in several Recesses, viz. *It is our Will and Pleasure.*

A. These are mere outward Forms, which favour of the ancient State of things, and only relate to the Emperor's Promulgation, and which can't hinder what is meant by the very Nature of Things.

Q. 10. Who has the Right of interpreting, abrogating, &c. these Laws?

A. As the Emperor and the States do mutually concur as equal and contracting Parties in making these Laws, there thence naturally arises an equal Right as to the Interpretation, Declaration, Alteration and Abrogation of them, and this is confirmed by Virtue of the Peace of *Westphalia**, and the Emperor *Joseph*'s Capitulation.||

Q. 11. Are not the old Laws tacitly abrogated by the present State of things?

A. As all Laws in the World are and must be accommodated to their proper Objects; and as the State of *Germany*, our present Object, and likewise the Object of the *German* Public Laws, has varied almost in every Age, so consequently a tacit Change in the Laws is implied.

* Art. 8. v. 1. 2. || Art. 2. &c.



CHAP. III.

Of the Imperial Capitulations.

GENERAL POSITIONS.

1. **A**MONGST the publick Laws of the Empire, the Imperial Capitulations are the chief.
2. From these Capitulations one may with Safety and Perspicuity treat of the Power of the Emperor, and of the Sovereignty of the States, in their respective Dominions.
3. From the Capitulations flows an Obligation on the whole *Germanic* Body, though hitherto they have been made by the Electors only.
4. Under these Words of the Capitulations [*wir sollen und wollen* *] there is plainly implied the Nature of a Compact.
5. The Electors, it is true, do not refuse to take the rest of the States into a Share of making the perpetual Capitulations, but not to a Right of making Additions to a perpetual Capitulation, if such a Thing was once to happen.

* i. e. *We ought and design.*

Question 1.

WHAT do you call the Imperial Capitulations?

A. They are Conventions, which the Emperor or the King of the *Romans*, when chosen by the Electors, are, before their Coronation, bound, (in the Name of the whole Empire) under Oath to observe, and by which the Power of the future Emperor is accommodated to the State of the *Germanic* Body.

Q. 2. When did these Capitulations begin in the Empire?

A. That Sort of Capitulations or *Convénions*, by which the principal Persons in *Germany* determined the Manner of the Succession, and qualified the Powers of its respective Rulers, are very ancient, even as early as the Beginning of the *German* Commonwealth, under the *Carolingi*. But the Period of these solemn Capitulations now in Question falls in with the Election of the Emperor *Charles V.*

Q. 3. Why was *Charles V.* the first with whom a solemn Capitulation was made?

A. As he was in possession of *Spain*, and the *West Indies*, and what at this Day is called the *Low Countries*, Limitations were made,

made, for fear he should stretch the Power of an Emperor beyond its due Bounds.

Q. 4. Have the Capitulations been continued down to the present Emperor?

A. Yes. [And *Limaeus* gives us the Capitulations from *Charles the Vth.* down to the Emperor *Leopold*, together with a Comment thereon. Moreover, whatever Additions and Alterations have been made in these Capitulations may be seen at one View in *Muldener's Capitulatio Harmonica*, ranged in such Manner, that by reading the Capitulation of the Emperor *Joseph*, the Contents of the preceeding Capitulations may be seen at the same Time.]

Q. 5. Do the Electors alone cause Capitulations to be made?

A. Yes, they alone: But for some time there have been warm Disputes on this Head between the Electors and the rest of the States. The former have remain'd in quiet Possession of the Exercise of this Right from the Time of *Charles V.* till the Death of *Rudolph II.* and so for a whole Century together. But at the Election of the Emperor *Matthias*, this Right, which hitherto the Electors had looked upon as an essential Part of the Business of Election, came to be contested. At length at the Peace of *Westphalia** it was

* Anno 1648, Art. VIII. sect. *babeantur*, so called, because the Article begins with that Latin Word.

ordered, That at the next general Diet they should draw up, with the Consent of all the States, a determinate perpetual Form of Imperial Capitulation.

Q. 6. Was this Contest happily ended in the following Diet?

A. Not at all; though this Affair was canvassed with great Warmth in the next general Diet holden at *Ratisbon* in the Year 1658: The Electors did, it is true, consent to make a perpetual Capitulation, but they would reserve to themselves a Right of adding more Articles at every Election, according as the Exigencies and Circumstances of Times might require. Which was granting nothing to the other States in reality; besides, they only granted it upon an Event, which seemingly might never happen, I mean in case of a perpetual Capitulation.

Q. 7. Was the Contest ended by this Means?

A. No. For as the Affair was not ended by this Means, and as in the mean Time there happened the Election of *Ferdinand IV.* the Electors using the Right they had hitherto been in Possession of, caused a Capitulation to be made, at the same Time signifying to the rest of the States, that in the next Capitulation they made, they would not omit considering their Remarks. The same Thing happened afterwards in the Year 1658, at the Election of the Emperor *Leopold.*

bold. Yet for all that the Electors refused to insert in their Capitulations all the Remarks made by the States.

Q. 8. Has this Contest remained undecided in the late general Diet at *Ratisbon*?

A. In the beginning of that general Diet, in the Year 1663, this nice Affair was again resumed, and there was Hopes it would be brought to a Period in the Year 1664; for, the Electoral College exhibited to the rest of the States a Draught of a perpetual Capitulation. But while every Body expected that the Affair was near being brought to an Issue, here arose new Contests. So that the *Turkish*, and afterwards the *French* Wars intervening, this Matter lay quiet, and probably will remain so on several Accounts, especially the following: *viz.* that the Interest of that illustrious House, in the *Lower Saxony*, which formerly did, on Account of its Power and Authority, urge it with very great Earnestness in the general Diet at *Ratisbon*, hath this Day, together with the Increase of its Dignity, taken a quite different Turn.

Q. 9. Are, therefore, the latter Capitulations valid, though not made with the Consent of all the States?

A. Yes. For though the rest of the States have expressly protested, that they will not acknowledge the Electoral Capitulations as Laws of the Empire, unless all their Additions inserted. Yet for all that, these Capitulations

tions are not contrary to the publick Conventions, nor consequently void and null. For, in the Instrument of the Peace of *Westphalia**, only the canvassing this Point, and if possible the deciding it, is referred to future Diets. But while this Affair could not, on several political Accounts, be determined in the Diet, the Electoral Capitulations do in the mean time remain in full Force. Yet for all that, there is no Encroachment made on the Privileges of the States ; for, their Right to share in making the Capitulation seems to remain (by the said Peace of *Westphalia*) always reserved to themselves in future Diets, although it has not been hitherto put in Execution.

Q. 10. Is the King of *Bohemia* also admitted in making a Capitulation ?

A. Several, and almost all the Doctors of the *German* Laws deny his having any Share in drawing up, and enacting a Capitulation. Some of them have remark'd a Thing which deserves to be taken notice of, *viz.* That upon the Occasion of creating the last new Electorate, the Emperor *Leopold* had endeavoured to make Way for himself, as King of *Bohemia*, to these and other Electoral Rights, from the Exercise of which he had hitherto been excluded. Yet the Preamble to the Emperor *Joseph*'s Capi-

* Art. viii. Sect. *babantur.*

Capitulation * seems plainly to insinuate, that the King of *Bohemia* was admitted in making the Capitulation, since it cannot be supposed, that these Words had been put in without the Knowledge of the Elector of *Mentz*, who has the drawing up of the Capitulations, and who, it is said, had at that Time the Capitulation, which was drawn up by the rest of the Electors, read at length to the Ambassador of *Bohemia*, to see if he had any thing farther to add to it.

Q. 11. Can the Emperor in Cases of Necessity recede from the Capitulations?

A. No. As the Capitulations are made by way of Compact, where one Party cannot resile. Add to this an express Prohibition given the Emperor at the End of the 7th Article of the Emperor *Joseph's* Capitulation.

The Words of the Answer given the Emperor by the Electoral College in the Year 1630 at *Ratisbon*, are also worth taking Notice of; viz. *much less may the past Transferring and Collating of the great Fiefs of the Empire be justified from a pretended Necessity, or any other Cause; but the plain Disposition of the Imperial Capitulation must in respect of both be kept to.*

Q. 12. But what if the Emperor should

* By these Words, *We have respectively agreed with them (i. e.) the Electors) and amongst them with our most dear Father.*

act contrary to the Capitulations, are such
Acts of themselves null and void?

1. To the last Articles of the old Capitulations, for Instance, those of *Charles V* *Ferdinand I*. *Rudolph* and *Matthias*, a general annulment Clause has been annexed, which has been omitted in the later Capitulations of the Emperors *Leopold* and *Joseph*, and a annulment Clause annexed to certain Articles only. Hence it may be said, that if the Emperor should act contrary to the Tenor of his Capitulation, and particularly to such Articles of it, as have an express annulment Clause annexed to them, then such an Act is of itself void and null. But if he should act contrary to other Articles, which have no such Clause annexed, the Act remains in Force, till by the Consent of the States it has been declared void.



CHAP. IV.

Of the Golden Bull.

GENERAL POSITIONS.

1. **T**HE Golden Bull seems to have been made by way of Compact with the Electors only.

2. To alter it, therefore, their express or tacit Consent is sufficient.

3. What the Golden Bull speaks of, as to the Number of Seven Electors, is to be taken

ken only as barely mentioning that Number, which was then, and not as absolutely determining a Number, which might not be intended upon Occasion.

4. The Original of the Golden Bull in *Latin*, as being authentic, is, doubtless, preferable to the Copy of it in *High German*.

Q. 1. What do you call the Golden Bull?

A. It is a Convention made between the emperor *Charles IV.* and the Electors, that determines the Election and Coronation of the Emperor, the Rights of the Empire, and some other Matters relating thereto.

Q. 2. At what time and for what Reason is it made?

A. It was drawn up at *Norimberg* and *Ingolstetz*, in the Year 1356, in order to put an end to the Contests that had happen'd before about the Election of an Emperor. The original of it is at *Francfurth*.

Q. 3. But was it for the Interest of the Empire to have this Golden Bull made?

A. Yes. In order to prevent various disputes about the Election of an Emperor.

Q. 4. Why was not the Golden Bull drawn up in the Language of the Country, namely, the *German* rather than *Latin*?

A. This had been better. But it happen'd to be drawn up in those times, when the use of the *Latin* Tongue had, according to the Policy

Policy of the Clergy in those Days, been introduced both into the Church and the Court. Hence it is suppos'd to have been written in *Latin*, tho' in a barbarous Style either by *Charles IV.* himself, or by his Counsellor, *Bartol.* Wherefore in the deciding of Matters that depend on the Golden Bull, the *Latin* Original, as being authentic must be referr'd to rather than the *High German* Copy, as the latter contains some things that are not at all in the former.*

Q. 5. Are all the Articles contain'd in the Golden Bull in Force at this Day?

A. Either by the express or tacit Consent of the Empéror and the Electors an Alteration has been made in a great many of them by which in the general is meant whatever according to the Tenor of the Golden Bull, is observed at this Day.

Q. 6. What are the chief Dispositions in the Golden Bull that are not in Force at this Day?

A. There are several, *viz.*

1. A Right of filling up a vacant Electorate, which by Chap. VII. § 53. belongs to the Emperor alone. But at this Day it must be done at least with the Consent of the Electors^b.

(a) Of which see an Instance below in Book II. c. Q. 6.

(b) Arg. Art. 38 & 43. Capit. Leop. et Joseph.

2. The Order of voting at the Election of an Emperor; which is oftentimes not observ'd.

3. The Place of Coronation^b, of Election^c, and where the general Diets are to be holden; viz. at *Norimberg*^d; from which, they have oftentimes receded.

4. As to the Guardianship of Electors, as all Guardians appointed by latter Wills are excluded^e.

5. As to the annual Meetings of the Electors^f.

6. As to the *Formula* of the Oath to be taken by the Electors, at the Time of chusing an Emperor^g; which is altered.

7. The Dispositions as to the Mess^h, with respect to the Protestant Electors, or their Ambassadors, are not in Force.

8. As to a certain Number of Attendants appointed the Electorsⁱ, and as to the excluding of Strangers; both which Dispositions are not so strictly observed at this Day.

9. As to the Electors being upon Bread and Water, if within thirty Days after taking the Oath for chusing an Emperor, they do not chuse one; which to be sure at this Day would be ridiculous to expect the Execution of^k.

(a) Prescrib'd by Chap. 4. Sect. 2.

Chap. 28. Sect. 5.

(b) By

(c) By Chap. 1. Sect. 1.

By Chap. xxiii. Sect. 5.

Sect. 4.

Sect. 2.

Sect. 20.

(d) By Chap.

(e) By Chap.

(f) Chap. xii.

(g) Chap.

(h) Chap. 11. Sect. 1.

(i) Chap. 11. Sect. 5.

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10. As to the Sons of Electors being obliged to understand three different Languages¹.

Q. 7. Is the ² Golden Bull likewise altered as to the Number of Electorates?

A. It seems so, because now there are Nine, and then there were but Seven. But it is to be taken Notice, that in the Golden Bull the Number of seven Electors seems not positively determined, but rather only bare mentioned.²

(1) Chap. 30.

(2) Because there is put to the Original of this Charter a great Seal, which is enchas'd in a Case of Gold; and to such Cases was given in those times the Monk- Latin Name of BULLA.

(n) See the third Position in this Chapter.

CHAP. V.

Of the Recesses of the Empire.

GENERAL POSITIONS.

1. **R**ecesses are Points about which the Nation has agreed, as in such or such a Year, after having finished all Deliberation of such or such a Diet, and after being com-

(a) *Recessus* is a Latin Word, signifying Retirement. Therefore the Germans call *Recessus Imperii* the Law settled, and put into due Form, at the End or Dissolution of every Diet. Upon which the States, or the Envoys, having thoroughly agreed, retire, or return every one to his own home.

for a Conclusion, every State, or every State's Deputy, retired to their own Home again.

2. Those Recesses having been set down at the End of general Diets, and the present Diet, which began in the Year 1663 at *Ratisbon*, not being yet ended, although now transported for a While to *Franckfurtb.* As there have not been Recesses of the Empire since 1654, in the ancient Form, so they might probably cease for the future, if this present Diet should become a perpetual standing one, as may probably be conjectured, it shall. Neither is there great Occasion for it, because

3. Decrees, passed in the general Diet, may be put into Execution by any one of the States, in his own Dominions, without waiting, till they are put into an Imperial Recess in the ancient Form; an Instance of which we have in striking eleven Days out of the *Protestant Kalendar*.

4. The more ancient Recesses of the Empire contain several Things, that have been tacitly abrogated by the subsequent Changes that have happened in the State.

Recesses of the Empire contain several temporary Matters, (for Instance, the Wars with the *Turks*) as also private Affairs.

Question 1.
WHAT do you call the Recesses of the Empire?

A. They are Conventions drawn up, and

* See n. 3. q. 2. in this Chapter.

enacted, in the general Diet, with the mutual Consent of the Emperor and the States, about Matters that chiefly relate to the Administration and Preservation of the Empire.

Q. 2. Do not Recesses of the Empire meddle with Matters, in which the publick State of the Empire is not directly concerned?

A. Yes: For, Recesses of the Empire are to be taken in a threefold Sense: Either

1. They meddle with Matters that relate to the Administration, and the publick State of the Empire; or

2. With Decrees, whereby the Emperor and the States, oblige themselves to transact temporary or accidental Affairs; for Instance a War with the *Turks*; or

3. With private Laws that relate to the particular Subjects of the States, as was the Case in the last Recess in the Year 1654, in which the manner of shortening Processes is fully prescrib'd*. Recesses understood in the second and third Sense, do not properly belong to the Subject in Hand: And many of these Ordinances are at this Day no longer in Force.

Q. 3. Are Recesses obligatory as sovereign Laws, or only as Compacts?

A. They are sovereign Laws by all means

(a) Imagine Recesses of the Empire, like Acts of Parliament here in *England*, for the better Understanding of this Question.

but conventional ones, like Acts of Parliament here in *England*.

Q. 4. Does, therefore, no Body but the Emperor, in Conjunction with the States, make *Recesses of the Empire*?

A. Yes: But still in such manner, that if the Emperor be absent, or otherwise hindered, the King of the *Romans*, as also the Vicars of the Empire, may, in Conjunction with the States, make *Recesses of the Empire*. And the States can also depute some in their Stead. Hence we have *Recesses of Deputation and Visitation* ^b.

Q. 5. In what manner are *Recesses* drawn up and published?

A. If the Emperor and the States have agreed in due Form in the general Diet, as to the Decision of the Points deliberated upon, they are drawn up by the Chancellor of *Mentz*; after this the Draught is shown to the Emperor's Ministers at the Diet, the Electors, and the rest of the States, or to their Envoys and Deputies, in order to be revised by them. Then according as they approve of it, there are two fair Copies made out on Parchment in the Chancery Court of *Mentz*, one of which authentic Copies is laid up in the Emperor's Archives at *Mentz*, and the other in the *Aulic Council*; and last of all

(b) As to which see below, B. 4. c. 2. and what the Germans call a *DEPUTATION*, is something like a Committee in the Parliaments of *England*.

...ey are signed, and published, and by that
Means they become Originals.

Q. 6. In whose Name are the Recesses
published?

A. In the Emperor's Name. Yet this
does not alter the conventional Nature of the
Recesses, nor is it any other than a simple
Sign and Relict of the former more arbitrary
Power of the Emperors.

Q. 7. What do you call bye Recesses?

A. They are such as are made, when some
things have been concluded in the General
Diet, which the States (after a Copy of a
Recess has been printed off) would not yet
a while on a great many accounts have to
be publickly known at the Time of publishing
it. If you know what secreet Articles are
which are sometimes added to public Treaties
in *Europe*, you may easily understand
this Question and the Answer to it.

Q. 8. Have not the Recesses of the Em-
pire been published in one Volume?

A. Yes: The first Collection of them
was published at *Spires* in the Year 1527.
But the Edition in 1660 (which yet is not
without Errors) is preferable to that and
the following Editions. The latest Edition
was in 1692. Mr. *Andler* has, to pretty
good Purpose, given us an alphabetical In-
dex of the Contents of the Imperial Recesses
and Constitutions.

(c) In Latin, *Recessus Secundarii.*

CHAP

CHAP. VI.

Of the public Peace, the religious Peace,
and the Peace of Westphalia.

GENERAL POSITIONS.

1. **B**Y the public Peace * in *Germany*, is to be understood that fundamental Law, about publick Safety in the Empire, enacted in the Year 1495, in the Emperor *Maximilian* the First his Time, after that a long *Interregnum* had occasioned, for a good While, such Confusion in *Germany* as struck at the very Principles, and the common Bond of Society and Government.

2. The religious Peace is founded on the common Principles of the Law of Nature, and of Society, and in 1555 put an End to the pernicious War the Emperor *Charles V.* wag'd against the Protestant States of the Empire.

3. The tolerating of different Religions flows from the Principles of the Law of God. Yet for all this the Jurisdiction of the Protestant States, as to religious Matters within their own Dominions, has been contested by the *Roman Catholic* States.

4. It, therefore, was a just War by which the Protestants obliged the *Roman Catholics*, when acting contrary both to the Laws of

* i. e. in Latin *pax profana*, in High-German *Landfrieden* God

God and Nature, to let them freely enjoy their Rights and Liberties in matters of Religion.

5. The prohibiting other Religions, beside the *Roman Catholic*, the *Lutheran* and *Reformed* only does, it is true, oblige the Catholics, to tolerate those three Religions, without obliging them to tolerate (contrary to their own Principle and Spirit of Persecution) any other Religion besides in their Dominions, but those three mentioned; yet it does not tie up the Liberty of Protestant States to tolerate more Religions besides, ex. gr. Anabaptists, &c.

6. By the Peace of *Westphalia* all the Prerogatives of Sovereignty and *Regalia* within their respective Dominions are, either expressly or in Words to the same Purpose, ascertained and secured to them.

Question. I.

WHAT do you call the publick Peace?

A. It is a Convention made between the Emperor and the States, by which all Acts of Hostility between them are prohibited, under a certain Penalty on the Infringers of it, and by which the manner of suing as to each others Rights is prescrib'd.

Q. 2. What Occasion was there for making a solemn Peace between Members of one and the same Community?

A. Though such Sorts of Peace be founded upon the Principles of the Law of Nature and of Society, as also the mutual Ties that subsist in well-ordered Communities. Yet formerly *Germany* saw such troublesome Times, specially in the thirteenth Century, after the fatal *Interregnum* that happened then down to the sixteenth Century, that mutual Bickerings, Depredations and Invasions between the States, even on frivolous Pretences (provided any Difference preceeded) were reckon'd lawful and even honourable.

Q. 3. How long did Matters continue in this sad Situation?

A. Till the time of *Maximilian I.* who, with the unanimous Consent of the States, assembled in the General Diet at *Worms*, in 1495, founded the *Chamber Court*,* and at the same time caus'd the public Peace to be proclaim'd, which afterwards in 1500 he renew'd in the General Diet at *Augsbourg*, and added thereto some useful Constitutions, which were renew'd and confirm'd by his Successors in the subsequent Receffes and in other public Conventions. *Schweder* || gives an Account of the chief Articles of this Peace.

* *Camera Imperii.* This is the Sovereign Court of Justice in *Germany*; there is such another too, call'd *Aulic Court*, and the States may chuse to which of these two they will apply. In some Measure you may compare it with the *House of Lords* in *England*.

|| In J. P. Part. Gen. Sect. 12.

Q. 4. What do you call the Religious Peace?
 A. It is a Convention made between the Emperor and the States, by which is tolerated in the Empire the Exercise of the *Roman Catholic* and *Protestant* Religion, as also the Possession of the Goods of the Clergy a certain'd and secur'd to them, and the Authority of the Pope of *Rome* abolish'd as to the *Protestants*.

Q. 5. What was the Occasion of making this Peace?

A. The Reformation of Abuses in the Doctrine and Manners of the *Roman Catholic* and that by Means of *Martin Luther*, who began this salutary Work by publishing Theses against the barefaced Sale of Indulgences by *Tezelius*.

Q. 6. But did the *Roman Catholics* immediately consent to tolerate the *Protestant* Religion?

A. After very great Tumults and Commotions, a Convention was concluded at *Passau* in 1552 between the Emperor *Charles V.* and *Maurice*, Elector of *Saxony*, which was the Foundation of the Religious Peace, that afterwards follow'd in 1555, at the General Diet of *Augsbourg*, between *Ferdinand* and the *Protestant* States.

Q. 7. Are those also who profess the * Reformed Religion?

* Reformed Religion is often call'd the *Calvinist* Religion, namely that of *JOHN CALVIN*; we might call it in English the *Presbyterian* Religion, because it is

formed Religion comprehended in this Peace ?

A. At this Day there remains no farther doubt about this, seeing it is inserted in the II. Article of the Peace of *Westphalia*, that those who profess'd the Reform'd Religion should enjoy the same Liberties, Immunities and Security ; for which they are under obligations to the indefatigable Endeavours of the Elector of *Brandenburg*.

Q. 8. Is the Exercise of no other Religions tolerated in the Empire, but the threeovement'd ones ?

A. So it is commonly thought from the first Words of the VII. Article of the Peace of *Westphalia* ; upon which Account these three Religions are the three establish'd Religions. But the contrary Practice is more consistent with Protestant and sound Principles.

Q. 9. But did the *Roman Catholics* acquiesce in this Religious Peace ?

A. The more violent among them preum'd to oppose these public Conventions, and the Popes of *Rome* caus'd Protests to be enter'd against them by their Nuncio's, that are tacitly annull'd by the V. Article of the Peace of *Westphalia*, and in the II. Article of the Emperor *Joseph's* Capitulation ; besides, such Protests against the Majority in the Empire are void and of no Effect.

the very same ; the *Lutherans* call themselves the *Evangelic Religion*, and their Doctrine is very near the same with that of the *Church of England*.

Q. 10

Q. 10. What do you call the Peace of *Westphalia*?

A. A Convention made between the Emperor, the Kingdom of *Sweden*, and the States of the Empire, whereby Provision is made for the Immunities and Sovereign Authority of the States, both in civil and ecclesiastic Matters.

Q. 11. What was the Occasion of making this Peace?

A. After concluding the Religious Peace, the Animosities and secret Machinations of turbulent Men had given Occasion to a 3 Years War, and as the Arms of the Protestants in *Germany*, in conjunction with the *Swedes*, had prov'd successful, and the Emperor and the Popish Leagueists had been tir'd out with long civil Wars, at length a solemn Peace was concluded at *Munster* and *Osnaburg*, which (like a Pragmatic Sanction, to be always in Force) is also laid as the Foundation of every Peace concluded since, where the German Empire is concern'd in.

Q. 12. What are the Contents of the Peace of *Westphalia*? *

A. It contains 17 Articles, the chief of which is the VIII. Article, where the Authority of the States within their respective Dominions, and the *Regalia* depending thereon

If this little Treatise, which we publish to try the Curiosity of the Publick, meets with Encouragement, a Translation of the whole *Instrumentum Pacis Westphalicae* will follow it pretty close by way of Supplement.

are confirm'd; as also the V. and VI. Articles, where provision is made, as to the possession of the Goods of the Clergy, and as to the Toleration of Religion.

Q. 13. But are all the provisions made by the peace of *Westphalia*, as to the Protestant Religion, observ'd inviolate every where at this Day?

A. Yes: Only that afterwards by a famous Clause in Art. IV. of the Peace of *Ryswick* it is unhappily yielded to, that the Cities of *Friburg* and *Brisac*, with their Dependencies, should remain even in point of Religion in the same State, in which they were at the time of delivering them up by the *French*. For which Reason most of the *Protestants* refused to sign this Peace. The Promises made Article V. § 38. & 40. of the Peace of *Westphalia*, as to the Security of the Protestant Religion in *Silesia*, were, it is true, afterwards neglected; but by Virtue of an amicable Accommodation made at *Alt-Ranstad*, in the Year 1707, between the Emperor and the King of *Sweden*, their Privileges are restor'd to them in a very ample Form: And now that the King of *Prussia* is in Possession of this Country, the *Protestants* have nothing to fear. And it is to be hop'd that the Disturbances in the *Palatinate*, with respect to Religion, shall also soon be put an End to.

Q. 14. To whom does the Right of interpreting the Peace of *Westphalia* belong?

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A. The

A. The *authentic* Interpretation of it belongs to the Emperor and to the States in Conjunction, as being the contracting Parties, and the *doctrinal* Interpretation of it even to private Persons, most especially to Doctors in the Law.

CHAP. VII.

Of the Relation Common Laws, or the Civil Law, have to the Constitution or the Public Law of Germany.

GENERAL POSITIONS.

1. SINCE according to the receiv'd Opinion amongst most political Writers of best Authority, and, doubtless, also in the Imperial Chamber* and Aulic Council the Princes have between themselves a Right as private Persons, such do wisely who advise a Prince to act conformably to the Civil Law in such Cases, where he is consider'd in a private Capacity, for Instance, in latter Wills, Guardianship, and Marriage.

2. The Constitution of Germany is very improperly illustrated from the three last Books of the Code.

Q. 1. What do you mean by private Laws for

* See the Note, p. 33.

Q. They

A. They are such as are made in Behalf of the Subjects; and not only those peculiar to *Germany*, as the old Laws collected by *Lindenbrogius*, and those call'd the *Saxon* and *Swabian* Laws, but likewise the Laws of other Countries, that have been adopted as subsidiary Laws, viz. *Justinian's Civil Law*, the *Canon Law*, and the *Feudal Law of Lombardy*.

Q. 2. Are the old Laws of *Germany* of great Authority and Use in the Constitution?

A. Since, according to *Lindenbrogius*, the old Laws of *Germany* have long been obsolete; and since there is found to be no Conformity between the *Saxon* and *Swabian* Provincial Law as to public Negotiations, they can be but of little Use in the Constitution at this Day. Except that Part of the old Laws, call'd the *feudal Law of Germany*, which, in such Matters as relate to the Manner of holding Estates, does rather agree with the Great *Charties*.

Q. 3. What is the Use of the Laws commonly receiv'd, and especially of the Civil Law?

A. On this Head there has been a warm Dispute for some time between the two Doctors *Tabor* and *Conringius*, the former extolling their Use in the Constitution, and the latter on the other Hand decrying it. But since, according to the more commonly receiv'd Opinion, the Princes and the States

have between themselves a Right as private Persons, such do, according to this Opinion, act prudently at least, in acting conformably to the Civil Law, in such Cases where the States of the Empire are consider'd in a private Capacity, for Instance, as Husband, Fathers, and Testators.

Q. 4. What is the Authority of the Canon Law in the Constitution?

A. Seeing the Ecclesiastic Princes and States are Part of the *Roman Catholic* Clergy, such Cases as are determin'd in the Canon Law with respect to the Clergy, have, only by the Way of voluntary Submission of the Ecclesiastic States to those Popish Laws, a legal Authority. We have an Instance of a remarkable Contest between *Clement*, Prince of *Bavaria*, and *Cardinal Furstenberg*, about the Succession to the Electorate of *Cologne*, that was determin'd according to the Canon Law. Thus the Ecclesiastic Electors cannot before they have received their *Pallium**

per-

* The Badge of Dignity belonging to a *Roman Catholic* Archbishop is the *Pallium*, as it is call'd, by the conferring of which Archbishops have a full Power to perform all Ecclesiastical Functions, to which they are not intitled without it: Consequently (according to the Observance in the *Romish* Church) a Patriarch or Archbishop cannot, before he has got it, consecrate a Bishop, make holy Ointment, consecrate a Church, or perform any such sacred Function, or even take the Title of Patriarch, Archbishop, or Primate, &c. But there

There is a Difference in Germany, where Archbishops and Bishops (who there have the *Pallium* too) have a Title, before they have been consecrated, and actually receiv'd the *Pallium*, to perform Ecclesiastic Functions, and to the temporal Rights in the Capacity of Sovereigns.

The *Pallium* is prepar'd in the following Manner : in the Festival of St. *Agnes* that is celebrated in a church in *Rome* dedicated to this Saint, and after *agnus Dei* has been sung, it is usual to set two white lambs on the Altar, which are afterwards given to the Sub-deacon of St. *Peter's* Church, which they (after the Pope's Benediction) commit to the Care of the Nuns of St. *Martba*, to be fed and shorn in the proper season.

This Wool is comb'd with other Wool, and spun by the Nuns of *Turris Speculi*, out of which are made *Pallium's* or little Cross-bands, which are worn over the shoulders and hang before and behind ; they are fasten'd at the Ends with thin Plates of Lead ; and are much in the same Form as Women's Tippets. Then they are brought to the Reliques of St. *Peter* and St. *Paul*, and after saying some Prayers over them, they are laid up, the next Day they are taken away by the Sub-deacon, and kept up religiously until a Patriarch, Archbishop, or other such Bishop, who owns no Metropolitan, require one, which is deliver'd him with a great many Ceremonies, and appropriated with the following Words : " *Ad honorem Dei omnipotentis & beatorum Apostolorum Petri & Pauli, Domini Papæ nostræ Romanæ Ecclesiæ, nec non Ecclesiæ tibi N. commissæ, tradimus tibi pallium, de corpore S. Petri sumptum, ut utaris eo certis diebus, qui exprimuntur in Privilegiis a sede Apostolica concessis.*" The Person on whom it is confer'd is exhorted not to stay (without the utmost necessity) two Nights in one Place with it. This *Pallium* lies round the Shoulders in such Manner, that two Cords hang before and behind. It is double on the left Side, but only single on the Right ; over this are four purple colour'd or blackish Crosses,

perform any Ecclesiastic Act that is valid.†

Q. 5. What is to be said as to the Feudal Law of *Lombardy*?

A. As to the Acquisition and Conservation of the Great Fiefs in *Germany*, its legal Authority is not denied, in so far as the contrary has not been particularly determin'd concerning them by other Laws of *Germany*. Add to this the IV. Article of the Emperor *Joseph*'s Capitulation.

which come before and behind and on both Sides, also three Pins, which are stuck into it.

The times, in which an Archbishop may wear the Ornament, are the following Festivals, *viz.* *Christmas*, *St. Stephen's Day*, *Circumcision*, *Twelfth Day*, *Palm Sunday*, *Maundy Thursday*, *Good Friday*, the three *Easter* Holydays, *Whitsuntide*, *St. John's Day*, the twelve Days of the Apostles; The three Festivals of the Holy Virgin, *All Saints Day*, the Anniversary of the Archbishop's Consecration.

These *Pallia* must be purchas'd at a high Price, of which Account the *Germans* have heretofore made grievous Complaints against the Pope, nay endeavour'd that such Impostures might be entirely abrogated, as may be seen in *Goldastus Reichs-satzungen*, Tom. VII. & *Sleidanus ad a. 1541. Conf. der Europaische Herill* Part. I. p. 879, 880.

† According to C. 4. x. de Transl. Episc. of which see an Instance below in B. II. c. 1. Q. 4.



BOOK II.

CHAP. I.

Of the Election and Coronation of the
Emperor.

GENERAL POSITIONS.



HOUGH the Emperors have been of the House of *Austria* for two Centuries, and upwards, yet there has always sufficient Provision been made as to the Liberty

of Election.

2. None are fitter to be raised to the Imperial Dignity than the Princes and Sovereigns of the *Austrian* Dominions.
3. Instead of three or four Coronations², was formerly the Custom, there is only one in use at this Day; and yet the direct Dominion of the Empire over *Italy*, and the other Provinces it has a Right to, suffers no detriment thereby, as that does not depend on the Act of Coronation.

(2) See Question 13, in this Chapter.

Question I.

W H O is Head of the Empire, and how does he become so?

A. The Emperor, or *Cæsar*, who is styled *Semper Augustus*; and he is raised to the highest Dignity in the World by Election. The present Emperor is *Charles* the VIIth, out of the House of *Bavaria*.

Q. 2. Has the Imperial Dignity in *Germany* been always obtained by Election, or no?

A. If a pure Election has not obtained from the Time of the *Carolingi*^b, (as *Lebman* thinks^c) yet as to making the Kings of *Germany*, it was by a sort of Election, yet still with regard to a lineal Succession, while the States of *Germany* did not readily pass by the Descendants of the reigning Family, when they were deserving of that Honour; which Mixture, both of Succession and Election, has continued in the *Saxo-Vitekinde* Family down to *Henry IV*. And for some Ages it has been the same as to the Arch-ducal House of *Austria*, from the Time of *Rudolph I*, its illustrious Founder, down to the late Emperor *Charles VI*.

Q. 3. What is the Reason that the Emperors have for two Centuries together been

(b) i. e. *Charlemagne* and his Posterity the Kings of *Germany*. (c) In his Chron. Spirensi, l. 2. c. 3. and l. 5. c. 17.

chosen

osen in a continued Series out of the Archi-
cal House of *Austria* ?

A. *Monzambano*, by which is to be un-
derstood Baron *Puffendorff*^d, assigns some
Reasons why scarce any House in *Germany*,
sides that of *Austria*, is able with its Re-
venues to support the Dignity of the Im-
perial Crown. Besides, the House of *Austria*
is, in case the Emperor be not elected out
of it, so ordered their Affairs, that they can
easily form their Dominions into a distinct
public. And some would reckon this
one of the slightest Reasons, to wit, that
several of the *Austrian* Provinces are so com-
modiously situated towards *Italy*. Whence
the House of *Austria* seems to be in a Capa-
city of powerfully supporting the Emperor's
right of Dominion over *Italy*, a Thing
which could not be so readily done by an
Emperor chosen out of any other House.

Q. 4. When an Emperor dies, how is the
election of a new Emperor made ?

A. The Elector of *Mentz*, as Dean of the
Electoral College, does, within a Month
from the Notification of the Emperor's
death, signify the same to his Collegues,
and summon them to meet, in order to pro-
ceed to a new Election, and they are oblig'd
to appear, either in Person, or when there
are good Reasons to the contrary, by their
ambassadors. The ecclesiastic Electors, tho'

(d) *De Stat. Imp.* c. 2. Sect. 4.

they

they have not received the *Pollum* from the Pope, as also the Secular Electors, that they have not received the Investiture, are qualified to perform the Solemn Act of Election, to which they regularly proceed in the Chancel of St. Bartholomew's Church Franckfurd on the Maine, the Ceremony being ushered in with High Mass, from which the Protestants may be absent, as they commonly are; but when they are obliged by Virtue of their Office to be present, they may be so with a safe Conscience. After Mass they proceed to the Altar, where an Oath is administered about chusing a fit Person; a Thing which is done more out of fashion and for Form's sake, than any thing else; seeing the chusing of the Candidate, as the Certainty thereof, does, according to the Nature of such Things, usually precede the Act. Afterwards the Elector of *Menz* elects the Votes. He first asks the Elector of *Treves*'s Vote, and last of all he gives his own. The Majority of Voices carries it. Then, they all come to the Altar, where the Elector of *Menz* declares the Emperor elect.

Q. 5. What if the Elector of *Menz* do not summon his Colleagues in due Time?

A. If he omit this, either in Whole, or in Part, the Electors can, by Virtue

(e) See the Note to Quest. 4. B. 1. ch. 7.

Ch

chap. 1. Sect. 21. of the Golden Bull, meet themselves.

Q. 6. Can any but a Native of Germany chosen Emperor?

A. M. *Tbulemarius* ^f denies this, as do others also, who appeal to a certain prohibitory Constitution of *Otto III*, the Genuine, ^g of which is justly called in Question. From the Practice, it is true, of so many ages, none but a *German* by Blood and Extraction has mounted the Imperial Throne, that this cannot oblige those who own no Superior. In the mean time, Prudence and the present State of Affairs persuade not to chuse without just Reason, any other than a Prince of *Germany*.

Q. 7. Can an Emperor be chosen out of Protestant Princes?

A. There are no prohibitory Conventions of this Effect. In the mean time it is scarce to be supposed, that the *Catholic* Electors, to make a Majority in the College, would give their Votes to a *Protestant*.

Q. 8. At what Age ought an Emperor to be chosen?

A. The Age he should be at when chosen is not determined by the public Laws. The Emperor *Leopold* was chosen in the 18th Year of his Age. The Emperor *Joseph* was elected King of the *Romans* in the 11th Year.

(f) In *Tr. de Bul. c. 1. n. 8.*

of his Age. Yet by the 47th Article the Emperor *Joseph*'s Capitulation it was provided, that upon such an Emergency the Emperor could not (to the Prejudice of the Vicars of the Empire) take upon him the public Government before he was to be eighteen Years of Age.

Q. 9. What are the necessary Qualifications of the Person to be chosen?

A. There are a great many Qualifications usually reckoned by the Doctors of the Law and by political Writers; for Instance, that the Emperor should be an illustrious, potent, august Personage, of a tall Stature, who understands *Latin* and *High Dutch*. But it seems most adviseable to leave such Matters to the superior Wisdom of the Elector College, who know better how to judge of the Gifts of Fortune, and the Qualifications of Body, necessary in the Person to be elected, from the present Circumstances of Affairs, rather than from the idle Chimes of the Learned.

Q. 10. Can an Elector give himself own Vote?

A. Yes, by the last Section of the Chapter of the Golden Bull, and as we see by several Instances.

Q. 11. When and where is the Coronation of the new Emperor perform'd?

A. When the Election and all the Ceremonies relating thereto are over, in order

in the greater Credit to the Person elected, there comes on the sacred Rite of Coronation, calculated to point out the great Dignity of human Government, which from ancient Times has been in use with most civl'd Nations, and which by Sect. 5. Ch. 28, the Golden Bull, is to be performed in the place of *Aix la Chapelle*, the ancient Seat of the *Carolingi*.* From which Disposition in the Golden Bull the Circumstances of the Times have often caused to recede, as we have an instance in the Coronation of the Emperor *sepb at Augsburg, An. 1690.*

Q. 12. How often was the Emperor own'd in former Times?

A. Most commonly three Times.

1. At *Rome*, by the Hands of the Pope, for the Remains of the *Roman Empire*.
2. At *Milan*, for the Kingdom of *Lombardy*.
3. At *Aix la Chapelle*, for the Kingdom of *Germany*. And sometimes there was a fourth Coronation for the Kingdom of *Arles*.

Q. 13. But what Occasion was there for this three or fourfold Coronation?

A. In order to point out, that the distinct bounds and Rights of these respective Kingdoms remained entire, when, by the Conduct of *Otto the Great*, and by the Success of his Arms, the Kingdom of *Lombardy* was (toge-

* See the Note to Qu. 16. B. I. Chap. 1.

ther with the Sovreignty over *Rome* and over the Remains of the *Roman Empire*) unit to the Kingdom of *Germany*.

Q. 14. Is the Coronation for *Germany* the only one in Use at this Day?

A. The Coronations for *Arles* and *Lombard* have been long in Disuse; the Coronation for *Rome* was longer in Use; but we have an Instance of it after the Coronation of *Charles* the Vth at *Bononia*, either for the Sake of saving the Empire a pretty burdensome Expence necessarily attending it, or for other weighty Reasons. By Virtue of the Capitulations down to *Ferdinand IV.* it is true, the Emperors were at Conveniency still obliged to ask the Crown for the Remains of the *Roman Empire*. But by late Capitulations this Clause is omitted, seeing that without being crown'd for it, the Right of the Empire to *Italy* remains entire, and the late Emperors have exercised it to pretty good Purpose.

Q. 15. Was the Coronation for *Rome* very expensive?

A. The Emperor went thither, attended with 4000 Horse and 20000 Foot, which by Virtue of the Matricula's were furnished him by the States. According to which Expedition, call'd *Roman Months*, the States are at this Day assess'd; and that oftentimes in a multiplicate Proportion, according as the Exigencies of the Empire require it.

Q. 16. Who performs the Ceremony of Coronation for *Germany*?

A. By Virtue of the Golden Bull, * the Right of putting the Imperial Crown on the Emperor's Head belongs to the Elector of *Cologne*. But the Elector of *Mentz* would have this to be restricted to the Coronation, when perform'd according to the Golden Bull

Aix la Chapelle, as this City is in the Diocese of *Cologne*, and subject to the Elector of

But when the Ceremony is to be perform'd in other Places, for Instance, at *Ratisbon*, *Augsburg*, *Francfort*, *Norimberg*, &c. the Elector of *Mentz* claims the Right to himself, as Primate of all *Germany*.)

Q. 17. How was this Contest decided?

A. The Matter was brought to an amicable Accommodation, by Virtue of which, each hath a Right of performing the Ceremony of Coronation, when it happens in a City of their respective Dioceses. But if it be of both Dioceses, then either of them may perform the Ceremony; which Compromise is confirm'd by Article 36 of the Emperor *Joseph's* Capitulation. Yet it is to be noted, that the Contest was not about the Right of putting on the Imperial Crown; for, this, according to the known Practice, all

Ch. IV. Sect. 4. (Whose Rights *Conzini* has more fully defended in *Affertione Juris Quintini*.

the three Archbishops concur, but about the
Act of Coronation and Benediction.

Q. 18. Can an Ecclesiastic Elector, before he has receiv'd his *Pallium*, * perform the Ceremony of Coronation?

A. No. For, Ecclesiastic Electors cannot perform any valid Act, before they have ^b been duly consecrated and receiv'd the *Pallium*. Hence it was, that when the Empress *Eleanora* was to be crown'd in 1630, and neither the Elector of *Mentz* nor the Elector of *Cologne* had at that time been duly qualified, the Elector of *Treves* perform'd the Ceremony. Yet it is to be remarked, that what is said Qu, 4. here, does notwithstanding remain untouched. The Reason is, that the Convocation of the Electors is done in the Capacity of a *German* Prince, as Chancellor and as first of the Electors; but the Act of Coronation is thought to be an Ecclesiastic Act, not to be performed but in the Capacity of an Archbishop.

Q. 19. What is farther to be noted at the Emperor's Coronation?

A. The Solemnities and other Ceremonies of which *Schweder* ^c gives a pretty full Account. Moreover, these mere Ceremonies

* See the Note to Quest. 4. Chap. VII. Book I.

(a) See Chap. XXIII. of the Golden Bull.

(b) According to Chap. IV. x. *de Translatione Episcoporum*, and Chap. XV. x. *de Elect.*

(c) In P. Spec. S. 1. c. 2. Sect. 34.

are better learn'd from Autopsy than from Books.

Q. 20. Is there nothing else worth taking Notice of as to these Solemnities ?

A. According to Protestant Principles, there are some things, which may seem superstitious, but the Observance of them, even for the future, is easily justifiable, partly from Antiquity, and partly from the Number of those who approve of them. In the mean time, the Oath which the Emperor, before his Coronation, is obliged to take to honour the Pope, cannot directly hinder his generous Endeavours of vigorously asserting his Right and Title to *Italy*, provided that in his Cabinet-councils political Matters be well distinguished from those call'd spiritual ; of which we have an Instance in the Kings of *France*, between whom and the Popes of *Rome* from *Clement X.* down to *Innocent XII.* there have been warm Contests, as to the Liberties of the *Gallic* Church and the Rights of the Crown, or the *Jus Regalia*, as it is call'd*. Thus notwithstanding the said Oath, the Provinces of *Italy*, and partly the Subjects of the See of *Rome*, may be obliged to pay Contributions towards defraying the Charges of a War in *Italy*, tho' the Court of *Rome* may grumble at it.

* Conf. Gilb. Burnet's Treatise of the intestine Wars of the Papacy.

CHAP. II.

Of the Rights of the Emperor with respect to the whole Empire; and of his peculiar Prerogatives.

GENERAL POSITIONS.

1. **T**HE Emperor is the Head of the Empire (yet still without prejudic to the respective Rights of its Members and that according to the public fundamental Conventions and the Capitulations.

2. The Emperor always holds the first rank in Affairs that are to be transacted by common Consent, both in and out of the General Diets.

3. In Contests that happen between the States of the Empire as to precedence, the Emperor exercises something not unlike an arbitrary Judgment.

4. As to what concerns the Legitimation and Ranking of the States, it is to be obtain'd of the Emperor.

5. The Emperor exercises some Rights in the Dominions of the States, that now interfere with their sovereign Authority there.

Q. 1. What does the Emperor get by virtue of his Election and Coronation?

A. Dominion over the remains of the *Roman Empire*, over the Kingdom of *Lombardy*, and over all the other Provinces, that since the time of *Otto the Great* have been united to *Germany* and subjected thereto, and have not afterwards been duly and lawfully exempted therefrom ; but especially the *public Administration of Germany* devolves upon him.

Q. 2. Is the Government in *Germany* arbitrary?

A. Very far from it. For, the Emperor takes the Government upon him, only according to the Tenor of Capitulations, without interfering with the Sovereign Authority of the States in their respective Dominions, that does not depend on the Will and Pleasure of the Emperor, but is always vested in the respective Dominions of the States, which they possess in their own Right like a Property.

Q. 3. What, then, is the Power of the Emperor with respect to the Empire?

A. The general Rights of the Emperor are rightly divided into three Classes :

I. That in all Matters, in which the whole Empire is concern'd, for Instance, in the General Diet, he does not only concur, but always holds the first Place.

II. That

II. That what relates to the ranking and legitimating of the States is to be obtained of him.

III. He can do in the Dominions of the States whatever does not interfere with the Sovereign Authority therein. This Part of the Emperor's power is call'd * the peculiар Prerogative of the Imperial Crown, namely such Rights as he exercises solely and separately by himself. Yet for all this, not only the whole of his Rights just now mentioned, but likewise those he exercises in conjunction with the States, may be call'd his Sovereign Power.

Q. 4 What are the Rights of the Emperor according to the first Class?

1. A Prerogative of proposing the Business to be transacted in the General Diet, and consequently the Order, in which this to be done.

2. Of directing as to the General Diet, and such like Meetings of the States.

3. Of voting in all Matters that come before the General Diet. Hence some writers give the Emperor half the Power of the Diet, which yet is to be understood with some Grains of Allowance. ||

4. Expediting public Acts in his own Name.

* *Reservata Cæsarea.*

† In J. P. Vol. I. Disp. 10. th. 15.

|| *Cum, grano Salis.*

5. Tak

5. Taking a general Care that the Empire suffer no Prejudice.

Q. 5. Are there not other Rights belonging to this Class?

A. To this Class some refer a Prerogative the Emperor has of sending Embassies from the Empire in his own Name, and at his own Discretion. But this is wrongly ascrib'd to the Emperor alone, contrary to the Practice of the Empire and the public Conventions.

Q. 6. What are the Emperor's Rights according to the Second Class?

A. The following, *viz.* 1. Giving the vestiture of immediate Ecclesiastic and Secular Fiefs, which still is to be understood of the solemn Act of Investiture only; for, the final collating of a vacant Fief does not depend on the Emperor alone.

2. Dispensing as to the Age of the States.

3. Legitimating such as shall afterwards require a Right to one of the States, as also legitimating Persons of what Rank soever.

4. A Right, for Instance, of granting the States a Privilege of Non-appeal from them.

5. Of conferring Dignities and granting new Titles, of which we have had two remarkable Instances in the Earldom of *Meurs* and in the Barony of *Mindelheim*, both erected into Principalities; the former to please the King of *Prussia*, the Possessor of it, and

and the latter given to the Duke of *Marlborough*, in Consideration of his Bravery against the Enemies of the Empire. And in like Manner hath the present Emperor lately made the Count of *Stolberg*, and the French Duke *de Belisle*, Princes of the Empire.

Q. 7. What Rights has the Emperor according to the Third Class?

A. Such as are commonly call'd the Prerogatives of the Imperial Crown.* The treating of which is the more ticklish, as one may very easily interfere with the Sovereign Authority of the States in their respective Dominions. For which Reason even the Emperor's own Ambassadors declin'd giving a List of these Prerogatives, tho' at making the Peace of *Westphalia* they were earnestly press'd to it by the Ambassadors of *Sweden* and *France*. In the mean time the Nature and Genius of these Prerogatives according to the present State of things seems to be a little precarious, as the States, under the Title of Sovereign Authority in their respective Dominions, possess in their own Right all the Powers of Sovereignty necessary to the Preservation of a State. From whence it appears to some, that themselves (if, contrary to what hath been hitherto the Practice, they chose to attempt

* *Reservata Imperatoria.*

) could not well be denied the Right to those petty Privileges, which the Emperor exercises in their Dominions. And farther, that as he exercises those Powers with the consent of the States, according to the rules of Prudence, he generally compensates this Civility of the States with Complaisance, and hardly denies them, especially the more powerful amongst them, the Requests, which, for Decency's Sake, they do him the Honour to make.

Q. 8. What are the peculiar Prerogatives belonging to the Emperor?

A. Amongst these are reckon'd 1. *Jus imariarum precum*, i. e. A Right by Virtue of which the Emperor does once, either immediately or mediately, present a Canon (who by that Means has the Preference of any other) and that both in mediate or immediate Chapters throughout the Empire; Yet it must be such a Person as is qualified, according to the Chapter Laws, to supply the Vacancy, whether it happens in the Months of the Pope, or in those that the Chapters have the Right of Presentation. But this Privilege is by Virtue of Article V. § 26. of the Peace of *Westphalia* to be restricted to immediate Foundations, where the Emperor exercis'd it before Jan. 1. 1624. Thus for instance, the King of *Prussia*, as one of the Estates of the Empire, does for the same Reason

Reason exercise this Right* both in the Cathedral and Collegiate Churches in his own Dominions: And the Electress of Brandenburg has taken Care to claim the same Privilege in the Female Foundations.

2. The Privilege of founding Academies or Universities of four different Faculties within the Dominions of the States.

3. The Privilege to naturalise. But that the States may do so at Pleasure Schwedt contends, and Objections to the contrary answ'red by Mr. *Thomasius*, || and we see that the States do so every Day; but whether *jure* or *de facto*, we shall not take upon us to determine.

4. A Privilege of nobilitating and conferring other Dignities, which yet *Cocceius* endeavours to prove to belong also to the States.

5. To this Class is also refer'd a Right being the last Resource of Appeal, by virtue of which, Complaints as to postponing or denying Justice may be brought before the Emperor, by the Subjects of the States. probably such Complaints will seldom be of any Service, as the les'd Party often

* *jus primariarum precum.* † in P. Spec. Sec. 18. §. 3. || in Dissert. *de jure dandae civitatis*. ¶ in Dissert. *de Potestate. Stat. Imp. circa Dignitatem* *emuli sui vel eis* *originali est. 10. 3. 1711.*

ut little Redress from this Quarter: And
esides, the inferior Judge may always, in a
Case of Appeal, send informative Letters to
the Imperial Court, by Virtue of the Capitu-
lations, in order to support the Sentence he
has pass'dt.

6. A Privilege of legitimating Bastards, censoring Notaries, Poet-Laureats, and conferring such like petty Dignities ; and this commonly executed by Imperial Commissioners (for that Reason call'd *Count Palatines*, and not to be confounded with the Count Palatines, who are the Princes of the Elector Palatine's Family) in the Dominions of the states, whose Powers are sometimes more ample and at other times more restricted, according to the Tenor of the Diploma's granted them.

Q. 9. Why do not the States themselves
cense Notaries and legitimate Bastards?

A. That the States themselves, especially the more powerful among them, have sometimes exercis'd the Right of legitimating in their own Dominions, is plain from the Example of *Jacchim II. Elector of Brandenburg*: and really in their respective Dominions it seems they might, in their own Right, use this and all the abovementioned Privileges,

† See Art. 17. of the Emperor Joseph's Capitulation.

by Virtue of the [†] Peace of *Westphalia*. Yet such Notariats and Legitimations would hardly be reckon'd valid out of the Dominion where they were got; whereas on the contrary, if conferred by the Emperor, they without Dispute must be valid over all the Empire.

Q. 10. Are there no other peculiar Prorogatives that belong to the Emperor?

A. Political Writers usually give us an Account of some more of them; but as they are doubtful, and as they interfere with the sovereign Authority of the States in their Dominions, I purposely forbear to mention them.

[†] Art. *gaudeant VIII.*

CHAP. III.

Of the Sovereign Authority and Dignity of the Emperor.

GENERAL POSITIONS.

1. IN the Empire the Emperor is no merely to be considered as the Head Person of a Republic, as to Rank only like the Doge of *Venice*, or the Captain General of the *United Provinces*, but he has real sovereign Authority.

2. The Emperor has either by express or tacit

acit Agreement the Precedence of all the
Princes in Europe.

3. The Privilege of ADVOCATE-GENERAL
of Christendom, that was granted to the Em-
peror in the darker Ages by the Pope, and
of which the Title subsisteth still (and may
be compar'd to the Title of *Defender of the
Faith* here in *England*) ought to be no Pre-
judice to the Religious Peace in *Germany*.

Q. 1. Is the Emperor possell'd of sovereign
Authority?

A. Yes: No Doubt on't, only mind to
take the Word *Sovereign Authority* in it's
right Sense, as we take it here in *England*,
that is, for *Supreme Authority*, and not for
arbitrary Power, in which latter Sense the
Word *Sovereignty* is sometimes taken abroad,
viz. in the Northern Kingdoms.

Q. 2. Has the Emperor Rank and Pre-
cedence of other Princes?

A. By the express or tacit Consent of the
other Kings and Princes he enjoys this Pre-
rogative. But the impulsive Cause, why for
many Ages they constantly gave him the
precedence, must, doubtless, be sought for,
both from the Power of the vast Body of
the Empire (especially as it was under *Otto's*
successors) and from the Right the Kings
of *Germany* acquir'd over the Remains of the
Roman Empire by Means of *Otto the Great*,
and the Title of Emperor taken therefrom:
or, the Veneration, in which the *Roman*

Empire was held in those Days, was pretty considerable.

Q. 3. What other Titles and Prerogatives has the Emperor by Virtue of the Laws of the Empire?

A. In * the Golden Bull he is call'd the Temporal Head of the Faithful, and in the Recess of the Empire, An. 1592 † he is call'd ADVOCATE-GENERAL of Christendom. Hence for many Ages he has been pompously stiled *natus Imperator* (that is, the born Leader) of the Christians against Infidels, the Sword-bearer, Great Mareschal and the Secular Arm, the Nature of which Titles is explain'd by *Cæsarinus Furstenerius*. || But whether they are still in Force in our Days is denied and the Reasons for it assign'd) (by Brunnemann.

Q. 4. But can these Titles, and in particular that of Advocate of Christendom, conferr'd on the Emperor by the See of Rome, be any Prejudice to the Protestants?

A. Tho' the Title of Advocate, confer'd on the Emperor by the See of Rome, be still enjoin'd by the Catholic Electors in the Capitulations with the Emperor, that is to be chosen, yet it is immediately subjoin'd, that this should by no Means be any Prejudice to

* C. 11 §. 3. seq. + § 92. || *de Jure Legatio-
Principum Imperii in præf. &c.* 31, seq.) (in J. H.
Prud. *Diff. IV.* §. 3. 4. || See the Capitulations of the
Emperors Leopold and *Josepb*, Art. 1.

the public Rights as to the Protestant Religion and the Religious Peace. So that by virtue of the Fundamental Laws, the Emperor is obliged to grant equal Protection to the Churches of the three Religions in the Empire, which the Envoys from the Protestant States might at the making of the Peace

Ryswick have justly told the Emperor's Ambassadors against that famous Clause in the IV. Article. Q. 5. Is, therefore, the Oath the Emperor takes at his Coronation, as to the Respect to pay the Pope, to be understood in the same Manner?

A. Yes. And this Oath, which was likewise taken by the Emperor *Joseph*, seems to be its Rife from the *Formula* of the Oath *Charlemagne* the Great is said to have taken to the Pope * which tho' *Goldastus* † takes to be a仿 of *Gratian's*; yet it is not altogether so tho' *Schilter* ‡ acknowledges it was something foisted into it. But Pope *Clement V.* according to the usual Sauciness of the See of *Aix*, gives it out to be an Oath of Fealty (though it was only an Oath of Protection, reserving entire the direct Dominion of the Empire over *Italy*.

in Can. tibi Domine 33. Distinct. 63. + in R^{ec}
ad Tom. 3. Imp. Constit. p. 43. || de libert.
el. Germ. 1. 3. c. 5. § 9.)(in Clem. un. ce
s.

Q. 6. What are the other Titles of the Emperors?

A. They call themselves elected *Emperors*. Some think that the Title of Emperor is Consequence of the Coronation, formerly performed at *Rome*, but that is a wrong Opinion, seeing *Charles V.* from the Minute the *German Electors* had chosen him, call'd himself *Emperor*, as well before the Coronation performed by the Pope or Bishop of *Rome* as afterwards; and all his Successors have been nevertheless Emperors tho' they never desired the *Romish Coronation*. In *Frederick* his time the Title of *Semper Augustus* was added. And *Maximilian I.* did upon good Grounds add that of King of *Germany**.

Q. 7. What are the Arms of the Empire?

A. An Eagle (the ancient Symbol of the *Roman Majesty*) with two Heads.

* See above B. I. ch. I. qu. 13.

CHAP. IV.

Of the several Ways a Vacancy may happen in the Imperial Throne.

GENERAL POSITION.

A Vacancy in the Imperial Throne may happen by three Ways. 1. By Death. 2. By a voluntary Resignation. And 3. By

being exauctorated or depos'd. And the
ftner the former happens, according to the
Laws and Course of Nature, the seldomer
the two latter have happen'd.

Q. 1. Have we, therefore, no Example
in Record of a voluntary Resignation?

A. The Abdication of *Charles V.* may be
adduced as one. The Reasons for his volun-
tary Resignation of the Imperial Dignity,
which formerly both he and *Francis I.* did so
very ardently aspire after, are inserted in the
Recess, in the Year 1559, and are as follows.

1. Old Age. 2. A bad Habit of Body.
And 3. A manifest Imbecillity. These are
at least the Pretext for such a Step; but as to
the real Reasons several have attempted to
conjecture, yet they might have been quite
otherwise.

Q. 2. With whose Privity was this Re-
signation made?

A. With the Privity of the Electors, as
appears by the aforesaid Recess, An. 1559.

Q. 4. Ought not this Resignation to have
been made into the Pope's Hands?

A. This was a pretty barefaced Desire of
the Pope, on Account of his pretended and
imaginary collating and confirming the Em-
peror's Title; but not regarded.

Q. 5. Have we likewise Examples on
Record of Emperors being exauctorated?

A. Yes, seeing the History of *Germany* in
former Ages furnishes us with the deposing
of

of Henry IV. *Adolphus of Nassau, and Wenceslaus.*

Q. 6. Can it be just to exauctorate an Emperor?

A. Tho' this cannot be prov'd by the aforesaid Instances, seeing that we are not to judge by Examples but by the Laws, and as it is just, that in such Cases Matters of Fact be well distinguish'd from Matters of Law; yet that deposing an Emperor may in some Way be thought just (tho' the Politeness of the present Age forbids our ever fearing any such thing) and does not seem quite inconsistent with the fundamental Laws of the Empire, and its Constitution, which is founded on them, as the States have a Share in the Government of the Empire, and as with Respect to the Empire the Emperor has not alone the sovereign Authority, who in Case he did not lay aside his hostile Intentions against the Commonwealth, and would not be prevail'd on by any Remonstrance made to him to forbear Acts of Hostility, and that the Commonwealth could not be safe, but by changing the Person of the Emperor, then he might be depos'd or rather exauctorated, if not precisely by Way of Authority, tho' by Way of War, which might be justified on the Foot of lawful Self-defence.

Q. 7. But who could in such a Case exauctorate the Emperor?

A. Not the Pope of Rome, as his Tools would

ild rashly enough affirm, nor the Count
atine of the Rhine, which last Opinion is
asioned by mistaking a Passage in §. 3.
3. of the Golden Bull, which whether
elates to public Affairs M. *Cocceius** seems
ly to question; nor is the Consent of the
ectoral College alone sufficient in such a
e; for thus at the same time the Majo-
of Voices seems to take place, a thing
ch can hardly be suppos'd without Ab-
ility and Iniquity. Hence it is rather to
said, that the Power of exauctorating an
peror is only to be ascrib'd to the whole
y of the Empire, if they resolved upon
n a Thing unanimously without a Di-
ont.

* in J. P. Prud. c. 16. §. 14.

† Nine Contradicente.

CHAP. V.

Of the Empress, or AUGUSTA.

GENERAL POSITIONS.

THE Privileges of the Empresses
were pretty extensive under the
nk and Saxon Emperors, as they were
en into a Share in the Government of
Empire, but the Case is otherwise at this

. The Empresses also have their own
cers, to which is referable the Dignity of
Chan-

Chancellor in the *Abbe* of *Fulda*, a considerable Prince in *Germany*.

Q. 1. Are the Empresses to be likewise call'd *Augustæ*?

A. *Livia*, the Wife of *Cæsar Augustus*, was the first who was honour'd by the Senate with the Title of *Augusta*, as also that Mother of her Country.* For, the Empresses did not at that time obtain the Privilege of *Augusta* in Right of their Marriage, afterwards they were granted in their Fours. But in Proces of time the Title and the Privileges of *Augusta* did even in Right of her Marriage belong to the Empress Queen.

Q. 2. Are the Empresses taken into Share in the Government of the Empire?

A. Both under the *Frank* and the *Salian* Emperors the Condition of the Empress was almost equally extensive, as in the Courts of Justice they had Seats assign'd them next the Emperor, and were admitted into a Share in the public Administration.

Q. 3. But is the Case otherwise at this Day?

A. Yes, as to a Share in the public Administration: For, besides the Magnificence with which the Empresses and the highest personal Respect paid them in Right of their Marriage, they are in the same Subjection to their Husbands, as private Women are to theirs.

* *Tacitus Annal. I. c. 14.*

Q. 4. If the Empress should happen to be conven'd judicially, who is to be her Judge?

A. *Linnaeus* + makes a twofold Distinction, to wit, when the Empress is to be condemn'd by any other or by the Emperor himself. In the former Case she may be condemn'd before the Emperor, but he to avoid suspicion of Partiality may, doubtless, grant Commission to others to that Effect: In the latter Case he may by Virtue of his Authority appoint Judges, and refer judging in the Cause to them. It was a remarkable Sentence that was pass'd by the Emperor *to III.* on his Wife *Mary*, accus'd of Intemperance, and wrongfully charged with the murder of the Count of *Modena*, who, after she was tried by the Princes, was condemn'd to be burnt, which Degree of Severity against illustrious Personages the Genius of the present Age does scarce admit of in the present Case.

Q. 5. What Court is the Empress, while Widow, subject to after her Husband's death?

A. She is under the Jurisdiction of the Successor of the deceas'd Emperor to the Imperial Dignity.

Q. 6. Is it the Custom to crown the Empresses?

Ad. c. 5. § f. obs. 4. Aur. Bul.

A. Yes;

A. Yes ; of this we have had even a Instance in the Emperor *Leopold's* Wife who was crown'd with great Solemnity & Pomp at *Augsbourg* in 1690 ; and a still in the present Emperor *Charles VII.* Wife, who was crown'd at *Franckfort* March 8, 1743.

Q. 7. What place does the Empress have in the Procession at the Emperor's Coronation ?

A. She walks next after the King of *Bohemia*.

Q. 8. Has not the Empress likewise great Officers ?

A. The Abbé of *Fulda* is styl'd her Chancellor, whose Office seems to consist here namely that as often as the Empress happens to be Crown'd, or to sit in her Imperial Royal Robes, he holds the Crown, which off her Head. This privilege was granted him by the Emperor *Charles V.* Mallinckrodt thinks, that there are no Diploma's extant that are sign'd by the Abbé of *Fulda*, in his Capacity of Chancellor to the Empress.

According to Chap. 22, in fin. & c. 26. Sec.

of the Golden Bull:

+ De Archi-Cancell. c. fin.

|| Conf. Mabil. de art. Diplomat. L. 2. c. 16. &

CHAP. VI.

of the Election of King of the Romans,
GENERAL POSITIONS.

B ETWEEN the Emperor and King of the Romans there is the same difference, as between a King and one who has an undoubted Title to the Succession.

2. In the Emperor's Life-time the King of the Romans is possess'd of no real Majesty*; but as to personal or titular Majesty no one questions it.

3. The Electors chuse the King of the Romans, without the privity and consent of the rest of the States.

Q. 1. What do you call King of the Romans?

A. A Prince, who in the Emperor's Life-time, and while he sits at the Head of Affairs, is chosen by the Electors as his undoubted Successor.

Q. 2. How is he chosen?

A. In the same manner, as has been said above || of the Emperor's Election. But it does not appear in what Age the Germans first began to chuse a Successor to an Emperor in his Life-time, or a King of the Romans, as he is now call'd.

* If you take this Word for Sovereign Power.
In Book 2. ch. 1. Qu. 3.

Q. 3. Is this extraordinary Election of King of the *Romans* precisely enjoin'd by the Fundamental Laws of the Empire ?

A. Not by any fundamental Law ; yet the Observance of several Acts of this Election is not found to be Prejudicial to the Empire, or contrary to the Liberty of the Electors.

Q. 4. Can a King of the *Romans* be chosen, whether the Emperor will or not ?

A. The Emperor's privity to it is sufficient, but his Consent seems not to be absolutely necessary.*

Q. 5. Can the Electors perform this Election, without the consent of the rest of the States ?

A. On the Part of the Princes this is call'd in question, as in ch. 1. of the Golden Bull there is nothing enjoin'd about this extraordinary Election of King of the *Romans* : And besides Article 8. § 3. of the Peace of *Westphalia* is alledg'd for them. But the Electors have hitherto, without the Privity and Consent of the rest of the Princes of the Empire, been in possession of the Right of chusing a new King, as often as they have thought proper to do so from the Exigencies of the Empire ; and in the alledged Article of the said Peace the Decision of this Contest is only promis'd but not given.

* Capit. Leop. & Jos. Art. 35. and 36.

Q. 6. Should the Father of the Person, who is to be elected King of the *Romans*, be alive, is his consent previously required?

A. At the least it is by way of Civility and Decorum, tho' the Electors have from other Proofs previously had sufficient Assurance of the Father's consent. *Schweder** gives an Account of what pass'd in the like Case between the Father and the Son in the Election of *Ferdinand IV.*

Q. 7. Is the King of the *Romans* possess'd of Majesty?

A. If by Majesty be meant only the Title of *Majesty*, it is not to be denied him, and in the common Style of the Court it is really given him by every Body, in order to show, that he ranks with other Kings in *Europe*, who are real Sovreigns; and it is not to be doubted, but that by the Recess of the Empire in 1555. † he has Precedence of the States. But if by Majesty be meant the MAJESTY or Sovreign Authority, which the Emperor has in the Empire, and which other Kings have in their own Dominions, the King of the *Romans* may not exercise it, but by Commission from the Emperor, when absent or otherwise hindred. To this Purpose is the Clause of § 47. of the Emperor *Joseph's* Capitulation.

* In S. I. c. 2 § 7.

† § 66.

Q. 8. Does, therefore, what is enjoin'd the King of the *Romans* in the Capitulation relate to his future Government only?

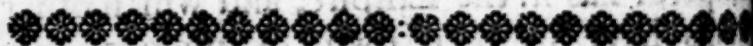
A. Yes. And he can do nothing that belongs to the Province of Emperor, but by Commission from him. Hence such, as ascribe real Majesty to him, are as much out of the Way, as one who would seriously contend, that the Dauphin in *France*, the Prince of *Asturias* in *Spain*, or the Prince of *Wales* in *England*, have real Majesty. For, in Word, there is the same Difference between the Emperor and the King of the *Romans*, as between other Sovereigns and their apparent Successors.

Q. 9. Has the King of the *Romans* precedence of other Kings?

A. So the *Germans* think and assert, and daily Practice seems to countenance it.

Q. 10. What is his Coat of Arms?

A. He bears an Eagle with one Hand only, turn'd to the Right-Hand.



CHAP. VII.

Of the Vicars of the Empire.

GENERAL POSITIONS.

1. **A**CCORDING to the diversity of Jurisdiction, there are two different Palatines, namely that of the *Rhine* and

29

and that of *Saxony*, who are Vicars of the Empire.

2. The *Palatine of Saxony* is in quiet possession of his Vicarship. But as to that of the *Rhine*, there is a contest between the Elector of *Bavaria* and the Elector *Palatine*.^a

3. The whole power of an Emperor belongs to the Vicars, except as to the Investiture of the great Fiefs.

4. The Vicarship is in force, even in the absence or during the Minority of the Emperor; supposing, in the first Case, that there is no King of the *Romans*.

Q. 1. What do you call the Vicars of the Empire?

A. They are Princes, who, according to the fundamental Laws of the Empire, upon the Throne's becoming lawfully vacant, or for any other just cause, enjoy the Privileges of being the Emperor's Deputies.

Q. 2. Where is the Vicarship of the Empire founded?

A. In chap. 5. of the Golden Bull. But does not plainly appear how long it was in use before that time.

Q. 3. In whose Hands is the Dignity of the Vicarship lodged?

A. According to the Golden Bull it is lodged in the Hands of the Elector *Palatine* of the *Rhine* and the Elector of *Saxony*.

(a) We have seen that in the last Vacancy the two latter Electors have agreed to exercise it together.

Q. 4. Why was the Vicarship limited
these two Houses?

A. This Matter is very obscure. In
mean Time it is probable, that the Vicarship
took its Rise from the ancient Right
High Stewards of *Germany*, which Right
Melchior Goldastus^b contends to have belong
equally to these two Princes, and that from
ancient times, I say, in ancient times there
were two high Courts of Judicature, or
the style of that Age, *Palaces*, according
a twofold different Right in use in *Germany*,
namely the Palace of *Franconia* or the *Rhine*,
and that of *Saxony*; and the Judges of the
Courts were called Counts *Palatines*, whose
Title has always continu'd in the Elector
Palatine of the *Rhine*: And tho' afterwards
it came into disuse with respect to the Elec
tors of *Saxony*, yet it is certain, that formerly
they call'd themselves Counts Palatines of
Pfaltz-Altdstadt, as also *Schartau*, are known
to be the Places, where they exercis'd the
Right, and where the Emperors themselves
did formerly appear, either to distribute
to receive Justice.

Q. 5. Do these two Electors quietly
joy this Priviledge?

A. As to the Elector of *Saxony*'s Right
there is no question about it. But after the
Death of *Ferdinand III.* there was a warm Dis

(b) In Ration. ad. tom. 1. Constit. & Regul.
Imp. p. 99.

pute rais'd by the Elector of *Bavaria*, as to the Elector *Palatine* exercising the Vicarship.

Q. 6. What are the chief Points of Law, on which each founds his Claim ?

A. The Elector of *Bavaria* caus'd the IV. Article of the Peace of *Westphalia* to be alledged for himself, by virtue of which the Electoral Dignity, which the Electors *Palatine* possess'd before this, together with all the Prerogatives of Sovereignty, Precedence, Arms, and what priviledges soever belong'd thereto, without excepting any one, ought to continue in the *Wilhelmine** Line, as long as there were Male Heirs remaining of it. On the other Hand it was excepted on the Part of the Elector Palatine of the *Rhine*, that the Dignity of Vicarship was not dependent on the Electoral Dignity, when transferr'd (otherwise all the Electors would have had this priviledge) but an appendage to the Palatinate of the *Rhine*. Hence it is expressly said in chap. 5. of the *Latin* Original of the Golden Bull, that this priviledge belongs to him by virtue of his *Principality* or *Palatinate*; and tho' in the *High Dutch* Copy it be by Virtue of his *Electorate* and *Palatinate*; yet the *Latin* Copy is in doubtful Cases preferable, as being more authentic than the other, which *Spanheim*, *Freinsheim*, *Coccoius*, *Schilterus*, and *Thulemarius*, have fully prov'd

* i. e. The House of *Bavaria*.

by many other Arguments taken from the very Frame of the Constitution. In the mean time the whole of this Contest and the public Acts concerning it are found collected in *Theatro Europico* and in *Lundorp*.^a

Q. 7. What was the Issue of this Contest?

A. It has hitherto remain'd undecided.^b

Q. 8. What Power have the Vicars of the Empire?

A. They have all the Power belonging to an Emperor, unless where there is an express Restriction. For, seeing the Vicars are in the Stead of an Emperor, there arises a Presumption for the general Extent of their Power.

Q. 9. Can't you give a more particular Account as to the Exercise of the Powers of the Vicarship?

A. If we take their Powers apart, the Vicars have

1. A Right of passing ordinary Sentences. Thus each Vicar erects an Aulic Council in his respective Court, yet still with regard to his proper District of Vicarship, even as to Causes that relate to Royal Fiefs. Yet the Imperial Chamber determines Processes in Name of both the Vicars.

(c) Tom. 8.

(d) Tom. 2. & 8.

(e) But see the Note to the second Position in this Chapter, although the Agreement there mentioned is to be looked upon as a Compromise, rather than as a final Decision.

2. A

2. A Right of presenting to Ecclesiastic
enefices.^f

3. A Right of raising Taxes and Contribu-
tions^g and performing the Ceremony of
giving the Investiture of Fiefs^h. In the Golden
Bull these are mentioned as the chief Points.

Q. 10. Have, therefore, the Vicars a Power
of granting the Investiture of Great Fiefs?

A. No, as the Investiture and collating
of these is, by §. 1. ch. 5. of the Golden Bull,
particularly reserv'd to the Emperor alone, or
to the King of the *Romans*. But, according
to some Authors, the Vicars have a Power of
king Cognizance as to the Great Fiefs.

Q. 11. Can the Vicars alienate any thing
that belongs to the Empire?

A. They are also forbid to do this by the
Golden Bullⁱ, in regard the Emperor alone
is not such a Power.

Q. 12. But, in the Absence of the Em-
peror, do the Vicars also act in his Stead?

A. The aforesaid Chap. 5. of the Golden
Bull does only provide in Case of a Vacancy
by the Death of the Emperor. In the
mean time from a Parity of Reason and from
the common Practice in such Cases, as also
from the subsequent Declarations of the
Emperors *Maximilian* II. and *Charles V.* that

(f) By Virtue of Sect. 1. ch. 5. of the Golden
Bull. (g) Ibid. (h) Ibid. and Pos. 3. of this Ch.
(i) Ibid. (k) As is gather'd from the Words of
the Sect. *ut permittitur*, &c.

Privilege, even in the Emperor's Absence, confirm'd to both the Vicars. Besides, the Vicar Palatine of the *Rhine* has several considerable Privileges. Yet there seems to be no great Use for such a Disquisition at this Day, as the Emperors are not wont to go to *Rome* to be crown'd, and the present State of Affairs does scarce allow of Absence, any other Account.

Q. 13. But what will you say, in Case the Minority of the Emperor, or King of the *Romans*?

A. In such a Case, the Power of the Vicars is to be asserted, and besides, there has been an express Provision made to this Effect, Article XLVII. of the Emperor *Joseph*'s Capitulation.

Q. 14. But what if the Emperor labour under some chronical Distemper, or a Weakness of Intellects?

A. *Hornius* thinks, that in such a Case, the Vicars may exercise all the Rights that belong to the Emperor.

Q. 15. But are there not also Vicars of the Empire for the Kingdoms of *Arles* and *Languedoc*, and for the *Roman Empire*, properly so call'd?

A. As to the ancient Kingdom of *Arles*, as it subsists no more, the greatest Part of it being incorporated with that of *France*,

ection about it is needless. In *Italy* the Duke of *Savoy* is, both in the Life-time, and after the Death of the Emperor, styl'd his *spiritual Vicar*, for which Purpose a Provision has been made by Article IV. of the Emperor *Leopold's* Capitulation, yet still upon Condition, that he act as a faithful Prince of the Empire. Mr. *Uffenbach* contends, that, during the Vacancy of the Imperial Throne, the Duke of *Savoy* is subject to the ordinary Vicar of the *Roman German Empire*, as well as to the Emperor and the Empire.

(*de Judic. Aulic.* c. 25.)



BOOK



BOOK III.

CHAP. I.

Of the STATES of the Empire and the different Orders, and of the MATERIALES of the Empire.

GENERAL POSITIONS.



IN the States of the Empire there are three things to be taken Notice of: 1. The sovereign Authority of the States in their respective Countries.

2. A Right of voting in General Diets: And 3. A mutual Partnership as to taking Care of the public Welfare of the Empire, but which then involves a Partnership, as to bearing the public Burdens of the Empire. The first Beginning of those three Rights of the States can scarce be exactly made out, for want of sufficient Light on this Head from the History of the middle Age.

2. The Division of the States into the Colleges is pretty ancient,

3. It puzzles the Writers about the Constitution of the Empire to find out the Reason, why the immediate Cities are reckon'd among the States, but the immediate Gentry, not. Hence most of them pass this Matter quite over.

4. * The Right of voting in the General Diets is not to be prov'd by the immediate Patricula's of the Empire.

Q. 1. Who, besides the Emperor, has a share in the Government of Germany?

A. The States of the Empire, who have Sovereign Authority in their respective Countries, and a Right of Sitting and Voting in the General Diets. By Virtue of the former Right they have Authoriety over part of the Common-wealth, and they separately exercise it to the Safety of their Part; the latter Right they deliberate and determine in common with the Emperor, about the Welfare of the whole Community.

Q. 2. What do you, therefore, call the States of the Empire?

A. They are commonly describ'd according to their Right of Sitting and Voting in the General Diets. But, doubtless, they are more adequately describ'd as follows; namely that the States of the Empire are such as exercise sovereign Authority in their respective Countries, but being under

T. 1. See Quest. 2. in this Chapter.

mutual tie they assist the common Emperor with their common Forces and Counsels.

Q. 3. From what time have the Prince and the Lords in *Germany* had a Share in the Government of the Empire?

A. The exact Period cannot be fix'd, want of Light from the History of middle Age. In the mean time, in so far as can be gather'd from the History of VIIIth, IXth. and Xth. Centuries, they began to have a Share in the Government from the Time the People of *Germany* became united under one Head, *viz.* under the Kings of the *Franks*; and afterwards, under the *Carolingi*, absolute Monarchy did somewhat preponderate; but from the Time of *Charlemagne* I. they fluctuated pretty plainly between Monarchy and a System of several distinct free Bodies; and the Genius of German Liberty does always incline to that Form of Government, tho' through the Ignorance of those Days there was not form'd a regular System of Government, according to the Rules of Policy. Hence it was, that after various fluctuations, as to the Rights of the States, their Sovereign Authority in the respective Countries was at length establish'd by express and plain public Conventions.

Q. 4. Into how many different Orders are the States of the Empire divided?

A. The chief Division in the General Diets is into 3 Colleges, namely, 1. The Electorates,

electoral College. 2. The College of the
Princes. 3. The College of the Free Cities.

Q. 5. Of how many Members does the
electoral College consist ?

A. According to the Golden Bull, there
were reckon'd 7 Electors. Afterwards by
virtue of the Peace of *Westphalia*, the Count
Palatine of the *Rhine* was added as an 8th
Elector; and not many Years ago a ninth
Elector, chosen out of the Ducal House of
Brunswick-Hannover, was invested with this
Dignity by the Emperor *Leopold* at *Vienna*
A. 1692. And after 19 Years Op-
position, made to it by the Princes of the
Empire, he was at length introduce'd into
the Electoral College, to the happy Ac-
complishment of which arduous Affair the
Good Services done the Empire by his Son,
the then Prince of *Hannover*, *George Lewis*
Augustus (afterwards *George* 1st. King of
Great Britain, &c.) did, no doubt, very
much contribute.

Q. 6. Have any more of the Princes
the prospect of arriving, in process of Time, at an
Electoral Dignity?

A. This may be gather'd from an Order
of the Imperial Resolution, dated July 21.
1696. and the Promise therein made as to
creating more new Electors. Thus in like
manner the Catholic States insist upon crea-
ting a new Catholic Electorate in case of the
extinction of the *Rudolphin* Line, that is to say,

if upon the failure of the *Wilhelmine* Line this Dignity should happen to fall to a Protestant House. And on the other Hand, Protestant States insist upon creating a Protestant Prince, in case of the failure of a Protestant Electoral House.

Q. 7. Of what States does the College the Princes consist?

A. Partly of Ecclesiastic, and partly of Secular States, which are divided into Benches. The Arch-Dukes of *Austria* have the first Place in the Ecclesiastic Bench; among them are the Archbishops, the first of whom is the Archbishop of *Salzburg*, who is both Legate of the See of *Rome*; the Archbishop of *Besanccon*, whose Metropolis *Besanccon*, together with the County of *Burgundy*,* is under the Dominion of the *French*. Among these may not be reckon'd the Archbishop of *Prague*, as he has no Connexion with the Constitution of *Germany*, of which he is an immediate Member, being one of the States of the Kingdom of *Bohemia*: Nor the Archbishopric of *Riga*, because *Livonia* long ago been no Part of the Empire. The Archbishop of *Utrecht* is out of the Question; as *Utrecht* is no more a Part of the Empire. Besides, it is under a Protestant Government, and that *Roman Catholic* Archbishop, who may be still appointed for it, and to this in case of his death, will be succeeded by a *French* Comte.

to be look'd upon as a private Person. The rest of the Archbischopricks, namely those of *Magdeburg* and *Bremen*, as being under the Dominion of Secular Princes, do no longer belong to the Ecclesiastic Bench. After these follow the Bishops, as Suffragans of Archbishops, except the Bishop of *Bamberg*, who owns no Metropolitan; and he has also from the Pope a * *Pallium*, like that of the Archbishops. The House of *Austria* disputes the Bishops of *Trent* and *Bresia* their Right to vote in the General Diet. It is also to be noted, 1. That in the General Diet the Master of the *Teutonic* Order has the first place among the Bishops, yet this by turns with the Bishop of *Bamberg*: And 2. That there is a cross Bench in the Diet, where the protestant Bishops, as the Bishop of *Osna-
rug*, if chosen out of the House of *Hanno-
ver* (which Bishopric falls to them by turns) and the Bishop of *Lubeck* sit. After the Bishops are the principal Abbés; to these add the Provosts of *Elwang* and *Berchold-
den*, who are of equal Dignity, as also the principal Abbesses. In the last Place in the Ecclesiastic Bench sit Prelates that are not Princes, who have two Votes in the General Diet, and in Recesses sign before Counts: they are divided into two Colleges, *viz.*

* See the Note to Qu. 4. ch. 7. Book I.

† In Latin *Præpositi*, and in German *Probste*.

the one of *Swabia*, and the other of the *Rhine*.

Q. 8. Who are the Secular States of the College of the Princes?

A. In the Secular Bench sit, besides the Arch-duke of *Austria*, already mention'd, the Dukes of *Magdeburg*, *Bremen*, *Saxony*, *Brunswick*, *Wurtemberg*, *Mecklenburg*, and *Holstein* as also *Marcgraves*, *Landgraves*, and *Coun* *Palatine of the Rhine*. As to the Princes of the Empire, properly so call'd, both ancient and modern, here follows a particular Description of them.

The ancient Families of the PRINCES in Germany, and the several Branches belonging to them.

I. AUSTRIA, Arch-dukes of, R. C.

II. ANHALT, Princes of
Bamberg, Ref. R. | Dessaу, Ref.
Hoynе, Ref. | Zerbst, Ev.
Koblen, Ref. | Dornburg, R.

III. BAADEN, Landgraves of
Baaden, R. C. | Durlach, Ev.

* N. B. That R. C. denotes those who are of the *man* Catholic Religion. Ev. those of the Evangelick or *Lutheran*. Ref. those of the Reform'd or *Calvinist* Religion. Ch. of *Eng. Church of England*.

IV. BAYER.

V. BAVARIA, Dukes of, Electoral-Branch
only. | R. C. v. H. , never

V. BRANDENBURG, Margraves of
Elect. Branches, Ref. | Bareyth, Ev.
Anspach, Ev.

VI. BRUNSWIC-LUNEBURG, Dukes of
Electoral or Hannover, Ch. of Eng.
Wolfenbuttel, Ev.

VII. HESSEN, Landgraves of,
Cassel, Ref. | Homburg, Ref.
Darmstat, Ev. odz | Rheinfels, R. C.

VIII. HOLSTEIN, Dukes of
* Gluckstadt, King of Denmark and his
Nephews, Ev.
Kiel, Ev.

* Holstein-Glückstadt is call'd the Royal Branch, because it is on the Throne of Denmark; the other, for Distinction's Sake, is call'd the Princely Branch, in German Fürstlich. The present Bishop of Eutin is of the Princely Branch, and is now Administrator of the Princely or Kielish Part of the Dukedom of Holstein; farther, he is now one of the Candidates for the Crown of Sweden, as the young Duke of Holstein Kiel himself is (by the Name of Grand Duke of Russia) the declared Successor to the Czarina Elizabeth. The Royal Branch has some other Branches too, viz. Sunderburg, Glucksburg, Plon, who are of the same Rank with the Princes of the Blood in France.

IX. MECKLENBURG, Dukes of
Swerin, Ev. I. Strelitz, Ev.

X. COUNT PALATINES.

Neuburg, extinct.

Sulzbach, now the Elector Palatine.

Birkenfeld } united into one.

Zweibrück }

XI. SAXONY, Dukes of, Elector. R.C. ² the
Weissenfels, Ev. ⁵ call'd

[the Albertine Branch

Ev. ³

Eisenach	}	those call'd the E nestine Branch, which was the Electoral on 200 Years ago.
Gotha		
Hilpurgshausen		
Meynungen		
Weymar		

XII. WURTEMBERG, Dukes of

Stutgard, R. C. | Neustadt, Ev.

Bernstadt, Ev. | Oels, Ev. *

+ Zweibrück, in French Deux Ponts, (as if you were
to say in English, two Bridges) is fallen to Birkenfeld
by Heritage; the Branch Zweibrück hath given to Sweden
the three following Kings, Charles Gustavus, Charles
the XI. and Charles the XII. and the present Prince
Count Palatine of Birkenfeld, or Zweibrück, is now
one of the Candidates for the Crown of Sweden.

* There are no more than 12 ancient Families, or
Houses, as they call them, in Germany; but one Family

the new PRINCES, who were only made
about 100 Years ago.

1. Aremberg,	R. C.	created in 1644
2. Aversberg,	R. C.	1623
3. Bell-Isle,	R. C.	1742
4. Croy,	R. C.	1666
5. Dietrichstein,	R. C.	1622
6. Eggenberg,	R. C.	1623
7. Furstenberg,	R. C.	1664
8. Hohenzollern,	R. C.	1623
9. Lobkowitz,	R. C.	1624
10. Lichtenstein,	R. C.	1623
11. Nassau,	Ref.	1654.
12. Eastfriesland,	Ev.	1650
13. Oettingen,	Ev.	1674
14. Portia,	R. C.	1662
15. Salm,	R. C.	1623
16. Stollberg		1742
17. Schwarburg		1697
18. Schwartzenberg,	R. C.	1671

After the Princes follow in Rank the sovereign
Counts and Barons of the Empire, who are
divided into four Benches or Colleges. 1. The
College of *Swabia*; 2. The College of *Fran-*

conia;

is often divided into several Branches, most of them
Sovereigns too, who, over and above their above men-
tioned Family-Names, take Surnames from their re-
spective Estates, let them be either such as are Sovereign-
ties (or Dominions to which Sovereignty is annex'd) or
let them be but private Country-Seats, only to reside
upon, and to get their Livelihood from.

conia; 3. The College of *Westphalia*, and
4. The College of *Wetterau*, and these four
Colleges have four Votes in the General Diet;
every College of those Counts being equivalent
to one Prince of the Empire.*

Q. 9. Which is the third College of the
States?

A. That of the Free Cities of the Empire;
they are divided into two Benches, the one
of *Swabia*, and the other of the *Rhine*. Some
of these Cities are powerful, others middling;
Yet most of them can boast of their Liberty
more than of their Power.

Q. 10. Has the College of the Cities
likewise a decisive Vote in the General Diet?

A. They have this expressly ascertain'd
and secur'd to them by the Peace of *West-
phalia*.† But because the College of the Free
Cities is not admitted by the other two Col-
leges to a Share in their Counsels, they have
complain'd, that their decisive Vote was of no
Use to them.

Q. 11. Are the immediate Gentry like-
wise summon'd to the General Diet?

A. No.

Q. 12. Cannot the Privileges and imme-
diate Nature of the State be prov'd by the
Matricula's?

* Of those Sovereign Counts or Earls and Peers of
Germany, there is about 60 altogether.

† In *Sect. tum in Universalibus*. As may be seen in
the Supplement to this little Treatise.

A. The

A. The Matricula's do, it is true, propose a certain, or at least an immediate State of the Empire, but they do not precisely determine it: Nor is there any one Matricula so correct, and determinate, but that infinite Disputes have been rais'd about it in the General Diet; and as these Disputes are not quite decided, a Matricula is not a proper Voucher to determine the Number and Rights of the States, but only a bare List of them (in so far as they are thought able to pay public Taxes) being for the most Part made in a Hurry, on Account of the Danger there has been in Delays.

Q. 13. How many Matricula's of the Empire are there?

A. There are a great many, of which the Matricula of *Worms*, made in 1521, is reckon'd the most exact.

Q. 14. By what Matricula are the publick Axes of the Empire asses'd at this Day?

A. The aforesaid Matricula of *Worms* is, in true, in the Recess of the Empire, made 1576, § 99. call'd the exact Matricula; but it was afterwards alter'd in some Particulars at the General Diets, holden in the years 1545, 1551, 1557, 1567, 1571, 1577; and after that in 1650. The Repartition of the Swedish Satisfaction* occasion'd a great

* That is, the Sum of Five Millions Rix-dollars or crowns, paid to the Crown of Sweden, as Satisfaction

many Alterations, till in 1668 it was proportionally revis'd, amended, and modell'd a.m. or Amends for the Expences of the War they carried against the House of *Austria* and the *Roman Catholic League* in *Germany*, for the Support of the Liberty of the Protestant Religion, in those troublesome times which preceeded the Peace of *Westphalia*. See 16. *Pactis Westphalicae*, § deinde pro *Militiae Suecicæ*

CHAP. II.

Of the particular Privileges of the Electoral College.

GENERAL POSITIONS.

1. **T**HO' the Period, when the Electoral

College was first instituted, can be determin'd, as to the precise Year and Day; yet it is certain, that the chief Parts of Election were in the Hands of Seven Persons long before the drawing up of the *Constitutio Bull.*

2. There are considerable Privileges, which the Emperor in Conjunction with the Electors, is possess'd of, exclusive of the rest of the States of the Empire; on which Account the Business transacted by them may be called *Imperial Electoral*.

3. The Authority of the Electoral College in the General Diet is as great as that of the rest of the States.

4. In difficult Affairs, the Electors have previous Consultation with the Emperor.

Q. 1. What are the peculiar Privileges of the Electoral College above the rest of the States of the Empire?

A. Either the Electoral College alone; or in Conjunction with the Emperor, is pos-
s'd of certain considerable Privileges, ex-
clusive of the rest of the States, which, on
that Account, may be call'd the Imperial-
Electoral Public Business of the Empire.

Q. 2. What Rights does the Electoral College alone exercise.

A. To this belongs the Business of the election of an Emperor, the Form and manner of which is prescrib'd in the Golden Bull, and herein is properly laid the Foundation of the Electoral Privileges.

Q. 3. When did the Electoral College get the Right of electing an Emperor exclusive of the rest of the States?

A. Such as ascribe its Origin to the Constitution of Otto III. are very much mistaken. Cocceius^a traces this Matter from its true original, namely that from the Beginning of the German Empire the four great Offices of the Empire, viz. the Butler, High Steward, Mareschall,^b and Chamberlain, were always lodged in the hands of four of the following five Dukes of the Empire, viz. the Count Palatine of the Rhine, the Dukes of Franconia, Bavaria, Swabia and Saxony, out of which one was commonly elected King of Germany; in which case and afterwards upon the uniting or alter-

(a) in Jur. Pub. Pruden. c. 10.

(b) Or Master of the Horse at Court, and General of the Horse in the Field.

ing these Dutches, the King of *Bohemia* and the Marquis of *Brandenburg* serv'd the turn. These Great Officers had a previous Consultation as to the Election of an Emperor; and hence they got a greater Privilege, till at length it came solely into their Hands. The three Archbishops had (according to the Custom of those Times, when Chancellors always were Clergymen) the Privilege granted them of discharging the Great Office of Chancellors, every one in a particular and considerable Part of the then vast Empire of *Germany*.^c

Q. 4. But what is the Reason, that the Electors must perform to the Bishop of *Bamberg* the same Great Offices, as those that belong to the Empire?

A. In so far as can be learn'd in an Affair involv'd in so much darkness, it was owing to the excessive Superstition of those times, that *Henry II.* or the *Saint*, (who, with his Wife, the Empress *Kunigunda*, founded that Bishoprick, and endowed it with Lands) order'd, that such Great Offices should likewise be perform'd to the Bishop of *Bamberg*, where many Learned Men are at a loss to find out the Reason, why the Great Offices of the Empire and those of *Bamberg* should be united in the same Persons. As formerly the Electors recognized some little Towns

^c See the 11th Question in this Chapter, p. 1. 2. 3. or

or Pieces of their Estates as Fiefs of the Bishop of *Bamberg*, but now, that Superstition Custom is so long obsolete, that it is a hard Matter to find out these little Fiefs. Mr. *Wagenseil*^d gives a pretty learned Account of the Substitutes of the Electors to perform the said Great Offices to the Bishop of *Bamberg*, as also of some other things relating thereto.

Q. 5. Is it not a Part of the Privileges of Electors that they alone constitute a distinct College?

A. Yes.^e And the Original of this Privilege seems to be more ancient than to be referr'd to the Times of *Frederic* and *Maximilian*.

Q. 6. Has not the Electoral College great Authority in the General Diet?

(d) *de S. R. Imp. summis Official. et sub-Official. c. 18.*

(e) *See Capit. Joseph. Art. 35.*

(f) The fundamental Union, call'd the Union of the Electors, is also founded in the Electoral College, see *Capit. Jos.* art. 6. with which is not to be confounded the particular Union, call'd the Union of the *Rhine*, that was concluded at *Wesel* in 1519. between the Ecclesiastic Electors and the Elector *Palatine*. Both which Unions are confirm'd in *Capit. Leopold* and *Joseph*, art. 6. But some affirm that the King of *Bohemia* is not comprehended in that Union. Yet as at this Day the receiving of the King of *Bohemia* into the Electoral College, as to the Exercise of all his Privileges, is look'd upon to be a Matter almost finish'd in the General Diet, *eo ipso* both the Conveniences and Inconveniences of that Union shall for the future devolve upon him. *Sic Q. 1. n. 4.*

In Matters that come before the General Diet the 9 Votes of this College are equivalent to the Votes of all the rest of the States.

Q. 7. What Right have they as to presenting Assessors of the Chamber?

A. Each of the Electors has a Right to present two Assessors, whereas the whole Circles have no more by the Peace of Westphalia.^g Yet the King of Bohemia is excluded from this Right.

Q. 8. What Right have they as to the making of a Capitulation?

A. Hitherto they have been in possession of the sole Right of making it.^h

Q. 9. Are the Electors inferior in Rank to any other than crown'd Heads?

A. They take precedence of free Republics, of Arch Dukes, Cardinals and Great Dukes, and reckon themselves equal to crown'd Heads.

Q. 10. What is the Imperial Electoral Business?

A. It may be divided into two Classes; to the first of which, where the unanimous Consent of the Electors is required, belongs

A Right of granting new Taxes in the Empire and augmenting the old ones.ⁱ

(g) Art. 5. n. 57.

(h) See above B. I. ch. 3. Quest. 5. seq;

(i) By Virtue of Capit. Leop. Art. 21. & Joseph Art. 20. add. Instr. Pac. Westph. Art. 9.

To the 2d. Class, namely where a Majority of Voices is sufficient, belongs,

1. A Right of putting any one, especially a State of the Empire, to the BANN,¹ which Right they possess provisionally, at least, till according to the Peace of *Westphalia*,² this Affair be determin'd with the Consent of the General Diet.

2. A Right of granting the Privilege of Coinage,³ and of restoring that Privilege when lawfully forfeited; to which the Emperor must likewise have the Consent of the Electors.⁴

3. A Right of Alienating and Pledging what belongs to the Empire.⁵

4. A Right of granting a vacant Fief,⁶ which is likewise to be extended to vacant Electorates.

5. A Right of adopting into the Number of the States.⁷

6. A Right of summoning General Diets.⁸

7. A previous Consultation with the Emperor, in Cases of difficulty,⁹ And some other Rights.¹⁰

Q. II. Who are the Electors of the Holy Roman Empire?

(1) Capit. Leop. Art. 28. & Joseph. Art. 27.

(2) Art. 8. § 3. (3) Capit. Joseph. Art. 33. (4) as

is gather'd from the said Art. 33. (5) Capit. Jos. Art. 12. (6) Capit. Jos. Art. 29. (7) by Recd.

Imp. dated 1654. § 197. Capit. Leop. & Jos. Art. 44.

(8) See Capit. Jos. art. 16. (9) Capit. Jos. art. 38.

(10) as may be seen in Baetler's Not. Imp. 1. 6. c. 2.

I. The first in the Electoral College is the Elector and Archbishop of *Menitz*, who is Dean of the College and Great Chancellor throughout *Germany*, whose Authority on that Account is considerable in the Empire.

II. The next to him in order is the Elector and Archbishop of *Treves*, who is Great Chancellor throughout *France* and the Kingdom of *Arles*.^z It does not appear what he has left of this Dignity besides the bare Title.

III. The third and last of the Ecclesiastic Electors, is the Elector and Archbishop of *Cologne*, who is Great-Chancellor throughout *Italy*.^y Of which Dignity and that of the Archbishop of *Treves*, if any Privilege remains, it is administer'd by the Vice-Chancellor of the Empire, who is appointed by the Great Chancellor of *Germany*.

IV. Of the Secular Electors the King of *Bohemia* is the first, and the fourth in order in the Electoral College, who was the late Emperor *Charles VI*. He is great Butler of the Empire^b whose Substitute is the Baron of *Limburg*.^c Moreover^d some historical

(y) Golden Bull ch. 3. § 7. (z) Golden Bull ch. 2. § 12. (a) Golden Bull ch. 1. § 11.

[b] Aur. Bul. c. 4. § 4. [c] It is to be noted, that the Dignity of Substitutes to the Great Officers of the Empire is hereditary in the Family of *Limburg* and in the respective Families hereafter mention'd. [d] Multus in Represent. Majes. Caesar. P. 3. c. 10. n. 96.

Writers affirm upon the Faith of *Crantz*, that the King of *Bohemia*, before his Advancement to Regal Dignity, was formerly the last in rank of the Great Officers of the Empire. By which remarkable Instance, whether such, as at this Day enjoy the same Dignity in the Electoral College, can claim and maintain the next Place to him, I leave others to determine. But it is to be noted, that the King of *Bohemia* has not hitherto been admitted to the ordinary Deliberations and the other Acts belonging to the Electoral College, except the Election of an Emperor. And upon creating a ninth Electorate, the House of *Austria* did very much commend to the States, assembl'd in the General Diet at *Ratisbon*, to add the town of *Bohemia* to that Electoral College, which they do not seem to refuse, provided, That *Bohemia* become a Circle of the Empire: 2. Pay Taxes equal to an Electorate: 3. Be bound by the public Peace and by the Religious Peace: And 4. Not have peculiar Privileges in the General Diet.

V. The fifth in Order in the Electoral College is the Elector of *Bavaria*, by Virtue of the Peace of *Westphalia*, he having been firm'd in the Electorate, which formerly was that of Count *Palatine's of the Rhine*.

He is Great Sewer of the Empire; in solemn Processions he carries the Imperial Globe. His Substitute is Baron *Walden*. The present Elector is the Emperor *Charles VII.*

VI. In the sixth Place follows the Elector of *Saxony*, Great Mareschal of the Empire, who at solemn Processions carries the Imperial Sword unsheathe'd before the Emperor. His Substitute is Count *Papenheim*. The present Elector of *Saxony* is likewise King of *Poland*.

VII. The Elector of *Brandenburgh* holds the seventh Place, who otherwise as to Power and Magnificence, is the most considerable Prince in the Empire: For, besides the Kingdom of *Prussia* and the Free Principality *Neuf-chattel* and other Sovereignties dependent thereon, his Dominions in the Empire are said to be a seventh Part of *Germany*, upwards of 200 Miles in Length. He is Great Chamberlain of the Empire^g, and in Processions he carries the Sceptre of the Empire. His Substitute is the Earl, now Prince of *Hobenzollern*.

VIII. The eighth Elector is the Count Palatine of the *Rhine*, who formerly was first of the Secular Electors, and afterwards the last but one. He has hitherto been

(f) *Aur. Bul. c. 4. Sect. 4.*

(g) *By Aur. Bul. c. 27. Sect. 3.*

reat Treasurer of the Empire, whose Substitute is Count *Sintzendorff*.

IX. The ninth and last Elector is the Duke of *Hannover*, who is of the Family of the *Guelphs*, so very much celebrated in the Annals of former Ages. *Ernest Augustus*, Duke of *Hannover*, was the first, who in the year 1692 was invested with this Dignity. His Son, the late Elector, was *George Lewis* (afterwards *George I. King of Great-Britain*) a warlike Prince, and who, besides, commanded the Imperial Army against the *French* in the late Queen *Anne's Wars*, and the present Elector is our most Gracious Sovereign. And as the rest of the Electors have some great Office confer'd upon them in the Empire, the Emperor intended to have given his House that of Great Standard Bearer. But by the protesting of the Ducal House of *Wurtenburg* against it, the Investiture of the Electorate alone was perform'd at *Vienna* in 1702, without conferring the aforesaid Great Office. But now he styles himself Great Treasurer.



CHAP. III.

Of the Sovereign Authority (or TERRITORIAL JURISDICTION, as it is called) of the States, both in Civil and Ecclesiastic Matters.

GENERAL POSITIONS.

1. **T**HE territorial Jurisdiction of States differs as to the Term, scarcely in Reality from the Sovereignty of any King in Europe.
2. This Sovereign Authority, both Civil and Ecclesiastic Rights within the Territories of the respective States, is exerted independently of the Emperor.
3. It is not quite a modern Invention; its Foundation is in some Sense coeval with the Beginning of the German Commonwealth, and in so far as some Parts of sovereign Authority have been contested by the States before the Year 1648, as to the free Exercise of it in their respective Countries, they were settled beyond Dispute by the Peace of Westphalia and the later Capitulations.
4. A sovereign Authority is also exerted by the States out of their respective Domains, as to War, Alliances, Embas-

aranties, &c. But this is done by the more powerful States only, who upon that count are said to be possess'd of Sovereignty.

Q. 1. What do you call the Territorial Jurisdiction?

4. A Sovereign Authority that comprises whatever belongs to Civil Government, namely, as to Matters of Peace and War, both in and out of the Empire, unless where there is an express Restriction made by the fundamental public Conventional Laws of the Empire.

Q. 2. Is not this territorial Jurisdiction Majesty itself?

4. When the Word *Majesty* is taken for Sovereign Authority, as the Writers abroad commonly take it, it is without Dispute, that every State in *Germany*, who has Subjects (not they who have none, *ex. gr.* most of the Free Cities of the Empire, and likewise all the immediate Gentry) really possesses and exercises the Sovereign Authority in their respective great or small Dominions. In the mean time the modest Expression of Sovereignty and of territorial *Supremacy* is probably that in Use, doubtless, in Memory of the pristine State of the Empire, and because the feeble Power of some little States would have been made Game of, if the Term of *Majesty* was used as to them; or at the least would be upbraided to them, if the powerful

erful States made Use of it, and they could not do the same ; and another good Reason may be, that there would seem scarcely any Difference of Dignity left to the Emperor himself, if the States attempted to boast loudly of their Sovereign Authority by the Name of Majesty.

Q. 3. Is it agreed, that Territorial Jurisdiction is to be defin'd by a sovereign or independent Power?

A. Yes. But it must be rightly understood with some small Restriction. In as far as every State is sovereign in his own Dominions, in so far the public conventional Laws of the Empire do not confine the Exercise of this Sovereignty in some certain Points, and in so far the Appeals from the Sentence of most of the States in Law-Suits to the Aulic Court or the Chamber of the Empire may not be thought to diminish their Independence.

Q. 4. When did the States get this Sovereign Authority in their Respective Territories.

A. In the Splendor in which it is at the Day it was ascertain'd to the States by express Conventions in the Peace of Westphalia, and by latter Capitulations. But its Foundation may in some Measure seem coeval with

See N. 7. Quest. 13. seqq. as also 22. v. 2. t. 4. q. 2. d. 1. v. 11. of the same ed. of the L. 1613.

the Beginning of the *German Commonwealth*.†

Q. 5. Shall such, therefore, be mistaken, who think it took its Rise in *Maximilian I.* his time?

A. There are some who are of this Opinion. In the mean time the first Period, when the Territorial Jurisdiction gain'd Ground, may, probably, be placed about the time *Charlemagne's* Posterity fail'd: By whose Extinction the States of the Empire became independent and their own Masters, so that as they then chose *Conrad I.* to be at the Head of them, they took Care (as most States do upon chusing a new Family, after the Extinction of a former arbitrary one) not to offer him their respective Lands, as Fiefs, and acknowledge them as such, otherwise than in such Manner as to be govern'd and possess'd in their own Right; and tho' the Annals of those times do not expressly testify this, yet it is sufficient, that they make Mention of the actual Exercise of most of the sovereign Powers by the States in their respective Dominions, and that freely, and without the Emperor being able lawfully to hinder it. Against which nothing may be concluded, by what *Conrad* did as to *Henry Duke of Saxony*, because besides that one may say it happen'd *de facto* and not *de jure*; it doth not exclude the Right *Henry*,

† See above B. I. ch. 3. q. 7.

Duke of *Saxony*, would always have had to govern his *Saxons* according to his own Fancy, had he but respected the elected King of *Germany* his Superior in every thing else, as he ought to have done.

Q. 6. Is the Territorial Jurisdiction of Force, as to the Subjects in the respective Dominions only?

A. It is of Force, not only as to those who live in their Dominions, but likewise as to Strangers. In the former Respect the Territorial Jurisdiction may for Distinction's Sake be call'd immanent, in the latter respect transient.

Q. 7. What Powers does the immanent Territorial Jurisdiction comprise.

A. Both *Ecclesiastic* and *Secular* Powers, namely, such as are necessary to the Government of the respective Countries of the States.

Q. 8. Do the *Roman Catholic* States exercise Ecclesiastic Powers.

A. According to the Principles of their Religion they dare not to presume to exercise a Power in Matters sacred. But the Protestant States having shaken off the Pope's Yoke, have justly claim'd to themselves a Sovereign Power in things sacred, which is very fully ascertain'd by the Peace of *Westphalia*.

Q. 9. Wherein, therefore, does the Right of the States as to *things sacred* consist?

¶ Art. 5. Sect. translatio 5. & Sect. jus Dicendum 48.

4. Not in a Dominion over the Conscience, as this does not in the least belong to any Sovereign, how absolute soever, and is one of the peculiar Prerogatives of the Divine Majesty: But in a Power, 1. Of directing as to the outward Decorum to be observ'd in the public Worship of God, and together with this a Power of appointing as to Matters indifferent. 2. A Power of ordering as to the Persons, who are to be employ'd in the external public Service of God: And 3. A Power as to the Things and Utensils necessary thereto.

Q. 10. Is the Power of the Princes in things sacred rightly denominated Episcopal?

A. That Denomination has commonly prevail'd, but improperly, in regard the sovereign Power as to things sacred comprises more than the three Parts of Episcopal Authority, *viz.* Orders, Diocesan Laws and Jurisdiction, which do, moreover, belong to Bishops independently of the Pope of *Rome*, nor is it proper for Princes to denominate from Possessors *malā fide*, a Power as to things sacred, that belongs to them in their own Right.

Q. 11. Are, therefore, the States obliged, whether they would or not, to tolerate those of a different Religion from their own?

A. Such as had for some Part of the Year 1624 enjoy'd the free Exercise of their Religion, the Sovereign Lord of the Country

ought to tolerate and to suffer them quietly to enjoy all the Privileges they were then in possession of: But such as were not at that time in possession of the Exercise of that Right, he may either tolerate, or order them to remove; and that without receiving any Hurt.*

Q. 12. But what if one or other of the States would resile from this Convention?

A. In such a Case, if the friendly Interposition of the Princes of the persecuted Religion is of no Effect, there is common Recourse had to the Right of Reprisal. Thus from the Complaints made to the King of *Prussia* by those of the Reformed Religion in the *Palatinate*, he once order'd to suspend the free Exercise of the *Roman Catholic* Religion in the Provinces belonging to him. And this seems to be the most effectual Method of obliging them to suffer each other to enjoy their respective Rights.

Q. 13. What Rights have the Protestant States as to the *Roman Catholic* Chapters and the Catholics within their Dominions?

A. In the mediate Chapters; and even they be *Roman Catholic* Chapters, the Protestant States may, within their own Jurisdiction, exercise all the Rights which formerly the Pope and the Emperor possessed therein, by Virtue of the publick Conventional Laws of *Germany*.

* By Instr. Pac. Westph. art. 5. Sect. 30.

But they have not exercis'd them ever since Jan. 1. 1624.

Q. 14. Cannot you briefly give a more particular detail of this Matter ?

A. 1. By Virtue of the Peace of *Westphalia*,* the Protestant States can present to Benefices, even in *Roman Catholic Chapters*, that have become vacant in the Months of *January, March, May, July, September* and *November*, that is, when it was the Pope's turn (it is likewise call'd the Prince's turn) to collate: But in the other six Months, when it is the Chapter's turn to collate, the States have an extraordinary Power of settling a vacancy, if the last Incumbent happen to die at a Prince's Court, or within two Days Journey therefrom, or if he be depriv'd his Benefice for Immorality. 2. They have a Right to exact Annats, or first Fruits. 3. They may grant Dispensations for the Marrying of Canonical Persons. 4. They may exact Contributions from them.†

Q. 15. What is compris'd in the *Secular Territorial Jurisdiction* of the States ?

A. From hence arises the following Rights, *viz.*

1. To cause their Subjects to take an Oath of alledgiance to them.

* Art. 5. Sect. 26.

† A certain celebrated *German Doctor* call'd *Stryk*, explaineth all this in an exceeding solid Manner in his *Treatise de jure Papali Principum Evangelicorum*.

2. To naturalize Strangers, even Infidels and Jews; a privilege, which was formerly granted the Electors alone,† but which is at this Day commonly exercised by all the States.

3. To enact proper Laws for their respective Subjects, and thus to exercise as well a legislative as executive Power, which they have so far as that they can enact Laws contrary to *Justinian's Civil Law*, which is adopted over all *Germany*, in Cases where Home-Laws are wanting.

4. Again to restrict the Force of those Laws with respect to some particular Persons, which is call'd a Right of granting Privileges.

5. A judicial Power as to Contests, that happen between their Subjects, and as to Crimes they are guilty of, that is, their Courts of Justice act in their Name.

6. To appoint Magistrates and the proper Officers both in Time of Peace and War.

7. A Right to Coin all Sorts of Money as Gold, Silver and Copper; yet still according to a determinate Foot, that is commonly received in the Empire.

8. In the General, the Direction of Matters of common Welfare;* to which belong the Sumptuary Laws, the Right of determining the Price of consumable Things, direct

† By Aur. Bul. c. 9. Sect. 2.

* Or what the Germans call Policy.

ng as to Provisions, promoting Commerce, and together with this, the Right of settling Posts, appointing Fairs, Weights, Elns and Measures, and whatever else is necessary in the Sovreign Powers, in order to obtain the End of Society, that is, the common Tranquillity and Happiness.

Q. 16. What busines ariseth farther out of the Territorial Jurisdiction of the States?

A. The *Negociations with Foreign Princes and free Republics*, as being on an equal Footing; and these are Functions which are regulated by the Law of Nations.

Q. 17. What particular Rights belong to it?

A. To this is referr'd, 1. A Right of sending public Ministers, which yet the Electors do not allow to belong to the Princes of the Empire* in all it's Grandeur.† And several Authors do, tho' contrary to daily Experience, assert, that this Right does not belong even to the Electors, as they slyly insinuate, that the form of Government in the Empire is Monarchic. 2. A Right of declaring War and appointing every thing about it. 3. The Right of entering into Alliances with foreign Princes. 4. A Right of mediating, and with this, as they coin-

* See below B. VI. c. 1. Quest. 19. & seq; till the End of the Chapter.

† That is, to send Ministers abroad with a representative Character, such as in the proper strict Sense of the Word are call'd *Ambassadors*.

monly go together, a Right of guarenteeing

Q. 18. Can all the States exercise the
abovementioned Rights ?

A. They may lawfully exercise them, un-
less thro' want of Ability they be incapable
of defraying the Charges of these public
Characters, while they cannot bring into the
Field and maintain out of their own Domi-
nions a sufficient Army, with all proper ne-
cessaries, in which sense *viz.* *de facto* but not
de jure, they are not in a Capacity of con-
tracting Alliances and sending Embassies.

Q. 19. Are the Persons of the States sa-
cred and inviolate ?

A. Yes : And that 1. With respect to
their own Subjects, who, if they assume to
themselves any Rights belonging to the Ter-
ritorial Jurisdiction, are guilty of High
Treason, and are punishable in the same
Manner, as for that Crime, and their Estates
Goods and Chattles, wherever they lie, or
are to be found, to be confiscated.* No
does the Nature of the Territorial Jurisdi-
ction, nor the general Tenor of the Passages
that are alledged, admit of any difference
to be made between the Crime of High
Treason committed against Electors, and
that committed against the rest of the States.
And likewise, 2. Should one of the States
or Sovreigns in *Germany*, happen to trespass
with respect to the Empire, for Instance, b

* By Capit. Leop. art. 27; and Capit. Jos. art. 28
break

breaking the public Peace, they may be brought to their Duty by being put to the *Bann of the Empire*: But 3. If the States trespass, as private Persons, for Instance, by committing Murder, Adultery, &c. they own no Court of Justice to which they are accountable: And, like crown'd Heads (to shew that they are Independent Princes, not controllable but by God and a superior Force of Arms) they use the Title, *We by the Grace of God, &c.**

Q. 20. How is the Territorial Jurisdiction acquir'd?

A. With respect to the Ecclesiastic States it is acquir'd by the Election of the Chapters: Formerly, it is true, under the Emperors of the Franconian Line and their Successors down to Henry IV. the Emperor had the Nomination of the Bishops and the other Prelates, as even at this Day the Kings of France, Spain, Poland, Hungary and Bohemia exercise this Prerogative. But by the bloody Arts of the Popes of Rome, especially *Hildebrand*, or *Gregory VII.* the Emperors lost this their natural Right, and by that means half their Power in the Empire: So that at this Day it must be said, as to the Prelates of Germany, *the Chapter elects, the Pope confirms, and the Emperor invests.* But the secular States do by hereditary Succession acquire this Right over the Territories, to which it is annex'd.

* Conf. *infra* B. 5. ch. 1. Quest. 9.

CHAP. IV.

*Of the Succession to the immediate Fiefs
in the Empire.*

GENERAL POSITIONS.

1. **E**lectorates cannot be divided and parcell'd out; a thing, which had it been introduced into the other Families of the Princes in *Germany*, the Empire would, at this Day, be so much weaken'd as it is.

2. In order to introduce the Right of *Primogeniture* into an illustrious Family, the Emperor's consent is commonly required.

3. The Emperor does, it is true, take cognizance of the Contests, that happen to the Succession in Illustrious Families, while the more powerful Pretenders would prevent his Decision by taking violent possession.

Q. I. What is the difference between the Succession to an Electorate and to a Principality?

A. Electorates* cannot be divided, as the eldest Son does always succeed to them unless he be quite incapable, or has volun-

* By *Aur. Bul.* c. 24.

ily renounced his Right.† An instance of which we have in the Electoral House of Brandenburg under the Reign of the Emperor Frederic I.

Q. 2. But upon the Failure of the Defendants either of an Electoral or Principal house, which of the collateral Branches succeeds, whether is it the oldest Cousin, or the Cousin next the Line that is extinct.

A. This was warmly contested between the two Ducal Lines of the House of Saxony, viz. that of *Altenburg* and that of *Vinar*: the former preferr'd the Cousin of the nearest Line, and the latter the oldest Cousin. But this contest was at an end upon the failure of the *Altenburg* Line. Yet I think, that the nearest Line is to be regarded.

Q. 3. But should one be already in possession of one Electorate, can he, as the nearest of kin, succeed to another?

A. *Linnaeus*'s opinion in the Affirmative* seems hardly to be found fault with, as there is no standing Law against it.

Q. 4. How is the Succession regulated in the rest of the Principalities?

A. By Right of Blood; yet in such manner, that in some Principalities the Right of Primogeniture takes place; and in others an equal Division of the Estates between the Brothers.

† *Aur. Bul.* c. 7.

* *Tom. 4. in Adit, ad l. 3. c. 7.*

Q. 5. Where Primogeniture takes place, do the rest of the Brothers receive nothing at all?

A. A certain Portion is allow'd them by the Brother who succeeds, or by the last Will of the Father, and that according to the Estates can bear it, and according to the Rank of the Person, who is to receive it.

Q. 6. Do the Children of Princes prominently succeed their Fathers?

A. Natural Children, tho' legitimated by the Emperor, do not succeed their Fathers. But the Case is otherwise with Children pre-created in unequal Wedlock.

Q. 7. Can a Prince's Right of Primogeniture be introduced by his Father's last Will?

A. According to the common Opinion, the Emperor's consent is required in such Case, nor is the Father's latter Will sufficient when even confirm'd by an execratory Clause.

Q. 8. Is the consent of the Empire (or of their Fellow-States,) likewise necessary?

A. There is no public Law in Germany to decide this Question. Therefore the Opinions of the Doctors are divided. Such an Affair in itself seems of sufficient Importance, that it should never be settled but by the General Diet. The Houses of *Hessen*, *Cassel* and *Darmstadt* have been so cautious as to have the Right of Primogeniture confirm'd by Virtue of the Peace of *Weissenfels*.

But the Houses of *Brunswic*, *Holstein*, *Mecblenburg*, and *Hanau* have got the Advantage of the Primogeniture in their Families, merely by the Emperor's consent to their Family Dispositions or Conventions about it. It is not quite to be denyed, that it would be (if not always necessary) yet always very proper to require beforehand to such things, either the Consent or the Guarantee of the Gentry and other Freeholders of the Country, as we have some sort of Instances of it, in the *Brunswic-Luneburg* Dominions, and likewise in those of *Holstein*.

Q. 9. Does there never happen any other sort of Succession than that of dividing it among the Brothers, and that of Primogeniture?

A. Yes: The Country may be govern'd in name of all the Successors, although in such Manner, that there is some Prerogative reserv'd to the Elder Brother; sometimes the Brothers govern by Turns.

Q. 10. Is not there likewise a Conventional Succession?

A. Such you may call the Family-Treaties, which still subsist between the Houses of *Saxony*, *Brandenburg* and *Hesse*, and which are call'd *Heditary Brotherhoods*.†

Q. 11. If the Succession falls to the nearest of Kin, or to any Body else by a

* Art. 15. in fin.

† in German *Die Erbverbruderungen*.

Conventional Succession, what falls to the Widows, and Daughters ?

A. The Widows have their Dower, according to the Circumstances of the Prince Country, or according to the Marriage Settlements : And the Daughters have the Allodial Portions, if there be any.

Q. 12. Is the Successor to a Prince bound to perform the Obligations of his Predecessor ?

A. There is a distinction made between a Successor, that is at the same Time a Descendent from him, who contracted the Obligation, and another who is not so ; if the former be the Case, the Successor ought to perform the Obligations of the Deceased but if the latter, not. In General, what Grotius* adduces as to the Obligation of Successor to a Sovereignty is here very much to the Purpose.

* de Jure Belli & Pacis l. 2. c. 14. n. 11. seq;

CHAP. V.

Of the Guardianship of Illustrious Persons in Germany

GENERAL POSITIONS.

1. **T**HE nearest of Kin is Guardian to an Electoral Prince, till he is 18 Years of Age : But as to the Govern-

ment

ment and Administration of his Estate, it seems that any other may likewise be appointed by latter Will.

2. The Mothers of Princes may be Guardians to their Sons, while they are in a state of Nonage.

3. Sometimes Princes under Age, when they have a Mind to take the Government of their Countries upon themselves, obtain a Dispensation from the Emperor to that Effect.

Q. 1. What if the Successor to a Country in *Germany* be, on account of his Age, incapable of taking the Government upon himself ?

A. In such a Case he is under the Guardianship of some Prince, or other, for a certain Time limited by Law.

Q. 2. Is this limited Time the same as to all the States under Age ?

A. The Sons of Electors have Guardians, and those the nearest of Kin, appointed them, till they are full 18 Years of Age ; according to the Golden Bull,* the Elder surviving Brother of the Deceas'd may be Guardian to the eldest Son.

Q. 3. Can, therefore, no other be appointed by latter Will ?

A. There are some, who restrict this Ordinance of the Golden Bull to the Right, Vote and Power of electing an Emperor ;

* c. 7. Sect. 4.
L 2.

and

and allow that this cannot be taken from the nearest of Kin ; but pretend that another may be appointed Guardian by latter Will, as to the Education of his Person and the public Administration of his Electorate or that very Estate, to which the Elector's Prerogative is annex'd. But this matter is very doubtful.

Q. 4. But may not a Guardian be appointed by latter Will, as to the other Countries out of the Electorate, tho' belonging to the young Elector ?

A. The Affirmative Answer to this Question may be more easily defended.

Q. 5. Whether or no does this 4th. §. the 7th. Chapter in the Golden Bull concern the Guardianship of a King of *Bohemia* ?

A. At the Election of *Charles V.* there was a warm Dispute on this Head between the Deputies of *Sigismond*, as nearest of Kin to *Lewis King of Bohemia*, and between the Deputies of the Nobility of *Bohemia*. But this Dispute is of no use at this Day, in regard that in *Ferdinand II.* his Time the Nobility of *Bohemia* lost the great Privileges they formerly had had.

Q. 6. What is to be said as to Ecclesiastic Electors ?

A. Should it happen, that* a Prince be chosen a Bishop within the 30th. Year of his Age, he may, by obtaining a Dispensation

* Contrary to Cap. 7. x. de Elect. & Elect. Pot. fatio

tion from the Pope of *Rome*, perform his Episcopal Functions without either a Guardian or an Assistant. Thus, for Instance, *Joseph Clement*, (afterwards, in Queen *Ann's* Time, the exauctorated) Elector of *Cologne*, did (upon obtaining a Decree from Pope *Innocent XI.* qualifying him to be chosen) in the 17th. Year of his Age, take upon him the Government of the Archiepiscopal See of *Cologne*. As to the Bishop of *Olneburg*, when a Protestant, and the Bishop of *Albuc*, who is always a Protestant, they are to be consider'd as other temporal Princes.

Q. 7. May not the Mothers of the Princes of the Empire, who are not Electors, be their Guardians.

A. Yes: As is plain from Instances of several illustrious Families in *Germany*.

Q. 8. At what Year are the Princes of the Empire of Age?

A. According to the common Opinion they are of Age at the 25th Year: Yet in some Princes Families there is a shorter time admitted. Sometimes it is usual to obtain a Dispensation from the Emperor, of which we have had an Instance in the House of *Wurtenburg*, when *Eberbard Lewis* was declar'd of Age in his 17th Year.

CHAP. VI.

Of the Investiture of the Fiefs of the Empire.

GENERAL POSITIONS.

1. **T**HE Investiture of the States is, it is true, perform'd by the Emperor as Representative of the whole Empire in this solemn Act.

2. The Investiture of the Great Fiefs, as are those of the Principal States, has not the Force of a true Collating.

3. The Oath of Fealty to the Emperor and the Empire, that is to be taken by the Investiture, does, together with the Investiture itself, show and confirm the common Bond of Union between the Empire, and the Emperor at the Head of it, on the one Hand, and between the invested Members of the Empire, on the other. ||

4. The States of the Empire take an Oath, but without Prejudice to their own Rights, which are confirm'd by the Emperor's Oath in his Capitulation.

Q. 1. When is it necessary to have the Investiture of the Fiefs of the Empire given?

A. As often as a new Emperor is chosen, or as often as there is a new Possessor of the

|| i. e. They are by Birth intituled to their Dominions without that Oath, besides, that Oath is a Bond of Fidelity to the Empire; as in *England* a Peer, when of Age, is a Peer by Birth, and not on account of the Oath he takes, but he can't take Possession of Peerage without taking the Oath of Allegiance.

Fei

Fief, so often does the Emperor (after a previous Demand made of the Investiture, which must be done within the Space of 12 Months after the Vacancy of the Fief, under the Penalty of Forfeiture) after administering the Oath of Investiture, confirm the Territorial Jurisdiction by a due and solemn Act.

Q. 2. Does this Oath prejudife the Liberty of the States ?

A. No ; as it is taken, without Prejudice to their own Rights, which Clause is always tacitly understood : Nor will some States allow it to be an Oath of homage, but *cum grano salis* : For, the Act of Investiture does rather partake of the Nature of a solemn Right than of a real Collating. Besides, *Grotius** does fully show, that the Feudal Oath, which only regards the Manner of Possessing, does noways affect the Independency† of the States of the Empire: And on the other Hand the Emperor is for the most Part obliged|| to confirm his Capitulation with an Oath.)(In short the Investiture is an ancient Solemnity, not to show that the Possession of the Dominions is precarious or founded on the Arbitrary Favour, either of the whole *Germanic* Body, commonly call'd Empire, nor of the elected King of *Germany*, commonly call'd Emperor, but only to show, that notwithstanding that Member of the Empire, who

* de Jure Belli et Pacis l. 1. c. 3. Sect. 23.

† in Latin *Immediatas*. || By Capit. Jof. in fm.

)(But who would presume to say, that it is an Oath of homage.

is to be Invested, possesseth his Estate by mere Inheritance, or otherwise, in his own Rights, (yet he acknowledges the Empire and the Emperor's Supremacy over him in such Way and Manner, as is determined by the Emperor's Capitulation and the Conventional Laws, on which the Constitution of Germany is founded.

Q. 3. With what Solemnities is the Act of Investiture perform'd?

A. These Solemnities may be seen in *Strykius's Appendix Exam. Juris Feudalis*, and also the instances there alledged of some Acts of Investiture perform'd by the Emperors.

Q. 4. Why are these Fiefs call'd Scepter and Standard Fiefs?*

A. It was formerly the Custom to give the Investiture to Ecclesiastic States with a Scepter, and to the Secular States with a Standard. At this Day the Ceremony is perform'd promiscuously by a Touch of the Sword.

Q. 5. Is the King of *Bohemia* and the Archdukes of *Austria*, obliged to ask Investiture out of their respective Countries?

A. No.

Q. 6. Do the *Electors* pay any acknowledgement to the Chancellor of the Empire in consideration of their Investiture?

¶ v. Quest. 10. Cap. 4. * in German *Zettler und Fabnen-Leben.*

A. They are exempted from paying anything, by Virtue of the Golden Bull; and what Electors give in such a Case, is mere Generosity.

Q. 7. Do the Imperial Cities also receive Investiture from the Emperor?

A. No: But they usually pay homage to an Imperial Commissary of the new Emperor, sent about in the Empire for that Purpose, yet still without prejudice to their own freedom and other ancient Rights.

Q. 8. Do the immediate, or Sovereign, Counts and Barons of the Empire, receive Investiture by the Hands of the Emperor?

A. No: The Act of Investiture of the Great Fiefs of the Empire is only perform'd by the Emperor, and that of the little Fiefs, Earldoms and Baronies, in the *Aulic* Court, where *Germans* receive their Investiture standing, and *Italians* kneeling.

Q. 9. Have the States, before they have receiv'd their Investiture, a Right to Vote the General Diets?

A. Yes: And they do not stand in need of a Dispensation from the Emperor. Hence it was, that when such a Dispensation was in 1608 offer'd the Elector of Saxony for compearing at the General Diet before his Investiture, he refused to accept of it, as a thing there was no Occasion for;

CHAR. VII.

Of the several Ways the TERRITORIAL
JURISDICTION of the States may be
forfeited.

GENERAL POSITIONS.

1. **W**HEN a State of the Empire does not act and behave conformably to the Laws, which make up the mutual Union and public Constitution of the Empire, he may be compell'd to it by Force of Arms. And the putting a State to the BAN of the Empire, is such a Sort of military Compulsion.

2. A Roman Catholic Ecclesiastical Prince or Lord upon changing his Religion, does by two conventional Laws of Germany, forfeit his Territories, which he possesseth as Bishop or Prelate.*

3. The Independency † of some States call'd in Question, by their more powerful Neighbours, who pretend to be their Subjects.

Q. I. By what Means can a Member of Germany lose his Territory, and the Sovereignty belonging thereto?

A. Chiefly three Ways, 1. By Trespass 2. By some particular Law of the Empire And 3. By separating himself from the Body of the Empire, he was a Member of, or being torn from it by Force.

* See Quest. 3. Chap. 7. † in Latin *Immediata*

Q. 2. How is it forfeited by Trespass?

A. Tho' what is alledged from the particular Law of *Lombardy* as to *Felony*, be not together properly applicable to the present case; yet there is no Doubt, but that in general, by Virtue of the true Sense and Aim of the public Laws of *Germany*, if a State does plainly discover a hostile Disposition against the Common-wealth, he may be put to the *BANN* of the Empire, and forfeit his Estate, and all the Rights of Sovereignty depending thereon, as is manifest from the Instances, in Queen *Anne's* time, of putting the Electors of *Bavaria* and *Cologne* under the *Bann* of the Empire.

Q. 3. How is the Territorial Jurisdiction forfeited by a particular Fundamental Law of the Empire.

A. To this is referr'd the following Conventional Law, namely, that if a *Roman Catholic* Bishop or Prelate embrace the Protestant Religion, he ought to forfeit his Bishopric or other Ecclesiastical Estate, together with the Sovereignty belonging to it; yet all without Loss of his personal Dignity. This commonly went to be call'd *Reservatum Ecclesiasticum*, being a peculiar Point the Church of *Rome* had stipulated, to prevent the Spiritual Princes and Lords in *Germany* from changing their Religion, where the Protestants did formerly oppose it very strenuously, till by Art. V. § 15 of the Peace

Peace of *Westphalia*, this Matter was compromis'd and confirm'd.

Q. 4. What if a Protestant Prelate should embrace the *Roman Catholic* Religion?

A. By Art. V. § 15. of the said Peace of *Westphalia* he forfeits his Ecclesiastic Estate and the Sovereignty thereto belonging. Of which Account the Elector of *Saxony* took the *Bailywick* of *Tburingen* from his own Cousin *Christian Augustus*, Duke of *Saxe-Zeitz* upon his turning *Roman Catholic* (who has since become a Cardinal and mediate Bishop of *Yauer* in *Silesia*) while the Master of the *Teutonic Order* grumbled in vain against it.

Q. 5. How can one be divested of his Territories and Sovereignty by a Separation from the *Germanic Body*.

A. Either totally, viz. When a Territory is conquer'd by any foreign Power, as when by subsequent Pacification it is given up to that Power for ever, for Instance, *Metz* and *Strazburg*, which is now subject to the King of *France*; or a State is allow'd to be exempt from the Union of the *Germanic Body*, and to be free and independent from the Supremacy of the Emperor, as *Switzerland* and *Holland*, which were formerly Members of the Empire: Or only in Respect of the *Immediacy*, namely, if a State, that has been immediately subject to the Empire, becomes a mediate Subject of another State, as the City of *Brunswick*.

The *Teutonic Knights* are look'd upon as Canonical Persons, and the *Bailiff* of their *Bailywicks* as a Prelate.

BOOK IV.

CHAP. I.

Of the General DIETS of the Empire.

GENERAL POSITIONS.



N their respective Territories the States rule apart; but in the General Diet they dispatch Matters of common Concern jointly.

2. And that by three Colleges, *viz.* 1. The College of the *Electors*; 2. That of the *Princes*, and Sovereign *Earls* and *Lords*, of which there are four Corporations, the Vote of each of these four being reckon'd, in the Diet, equivalent to the Vote of one sovereign *Prince*: And 3. That of the Free Cities.

3. In these Colleges a Majority carries any Point, except in Deliberations as to Religion and public Taxes.

4. A Majority of the Colleges in Conjunction with the Emperor makes a Decree, or Law, of the Empire.

Q. 1. What do you call the General Diet of the Empire?

A. A Meeting of the Emperor and the States, in order to transact Matters of common

mon Concern to the Empire, that are to be determin'd by agreement either between the Whole, or the Majority of the States.

Q. 2. Does the Union of the German Common-wealth appear from the General Diet?

A. The Dominions of the States are to be look'd upon as distinct Commonwealths. But that those German Commonwealths have a common Concern, in so far as they are united together by a general Bond of Union into that most considerable Body, which goes by the Name of the Empire, this Union is chiefly to be seen in the General Diet.

Q. 3. Have General Diets been in Use since the Beginning of the German Commonwealth?

A. In order to determine Matters of great Consequence, the Advice of the States, assembled into Meetings, has been desired by the ancient Kings of Germany, both before and after Charlemagne's time.*

Q. 4. Who calls the General Diets together?

A. The Emperor (and that as often as the public Exigencies of the Empire require it) with the previous Consent of the Electors, except that of the King of Bohemia, whose Concurrence is only required to those Diets

* See above, B. 1. c. 2. Qu. 4.

† By Art. V. §. 8. Pat. Westphal, and by Cap. Art. 16.

that are call'd together, in order to chuse a new Emperor.

Q. 5. How is the Meeting of the General Diet notified to the States?

A. Formerly the Kings of *Germany* order'd the States to appear before them by their Letters Patents, written in an imperious strain. At this Day commonly the States, especially the more powerful of them, are pretty kindly desired to meet, and that most commonly under the Emperor's own Hand.*

Q. 6. Where are the General Diets to be holden?

A. This Matter is not determin'd by the public Laws, only that by c. 28. §. 5. of the Golden Bull it was appointed, that the first General Diet after the Election of an Emperor is to be holden at *Norimberg*. Hence it is, that this Matter is left to the Discretion of those who appoint the Diet; and for this Purpose the Imperial Cities in the middle of *Germany* seem to be the most commodious; tho' this be not absolutely necessary.†

Q. 7. Are all the States to be call'd to meet?

A. Yes; even the Ecclesiastic States, who

* And the States would hardly brook to be coldly summon'd to the General Diet, much less to be order'd, by Way of arbitrary Command, to meet.

† And we have seen the late Diet holden for half a Century together at *Ratisbon*, which was near hand to the Emperor's Residence, but not at all in the Middle of *Germany*.

have not yet receiv'd their *Pallium*, and the Secular States, who have not yet receiv'd their *Investiture*. During the Vacancy of Sees the Chapters appear for the Spiritual States, and during the Nonage of the Secular States their Guardians appear for them.

Q. 8. Do the *immediate* or *independent* Nobility of the Empire likewise compear to Vote ? ||

A. At this Day they have no Right to sit and vote in the General Diet. In the mean time we have some Traces remaining of their having formerly affisted at Consultations in Diets. How this happen'd, *Dartius** gives us pretty learned Conjectures.

Q. 9. What are the preliminary Cares of the General Diet?

A. The Vice-Mareschal of the Empire being inform'd of the Arrival of the Princes or their Deputies, causes Lodgings to be provided for them. Afterwards he usually pays his Respects to the Emperor, if present, or the first Visit, to his Deputies. In fine, the Deputies exhibit their Credentials in the Imperial Chancery Court, that is, to the Deputies of the Elector of *Mentz*.

Q. 10. What is to be noted as to bringing on the Deliberations in the General Diet?

A. If a competent Number of the States compear, and they agree to begin their Con-

|| In German, *der Reichs freye Adler*.

* de Pace publ. l. 5. c. 4. seq;

† Always the Count of *Poppenheim*.

ultations, after Prayers, the Emperor, if present, or his principal Commissary, being seated on a Throne (round which the Electors or their Deputies sit one Step lower, the Ecclesiastic and Secular Princes or their Deputies being in the other Seats, but the Deputies of the Free Towns (standing on the Outside of the Bar, *) *I say*, the Emperor or his Commissary makes a Speech, returning them Thanks for their dutiful Meeting; and at length he causes the Matters to be deliberated upon to be read by the Emperor's Secretary. Afterwards the Elector of *Mentz* makes an Answer in due Form to the Emperor's speech, and humbly desireth a Double of the Matters to be deliberated to be laid before the States assembled in Diet.

Q. 11. After these Ceremonies in the General Diet are over, how are the Consultations order'd?

1. When the States come to deliberate, they form themselves into three distinct Colleges: The First is the College of the Electors, where the Elector of *Mentz* presides. But then when a Vacancy happens in the See of *Mentz*, there are Disputes as to this Dignity and Office between the Chapter of *Mentz*, the Electors of *Treves*, *Cologne*, and *Monza*, each of them making Pretensions thereto. The Second is the College of the Princes, where the House of *Austria* and the

* As in *England* the Commons do, when they appear before the King in the House of Lords.

Archbishop of Salzburg presides by turns. The Third is the College of the Imperial Cities,* where the Deputy of the City, where the General Diet is holden, presides. The separating in this Manner into three distinct Colleges is suppos'd to have begun in 1483 in the General Diet at *Frankfurth*, yet some others trace the Origin of this Separation higher up, especially that of the Electoral College.

Q. 12. Are the Matters to be deliberated upon to be handled in the precise Order the Emperor has put them?

A. This is not expressly determin'd by any fundamental Law.

Q. 13. Does the Majority of Voices take Place even in every one of those Colleges?

A. Yes; unless it be in Matters of Religion and public Taxes, and where the States cannot be consider'd as one single Body.||

Q. 14. Is a Majority with respect to the Colleges also regarded?

A. It is confirm'd by daily Practice, and remarkable Instances, that two of the Colleges in conjunction with the Emperor, notwithstanding the Dissent of the third College, make an Imperial Decree.

Q. 15. But what if the Emperor's Consent cannot be obtain'd?

A. If the Emperor and the States cannot agree, there can nothing be concluded, nor can an Imperial Decree be made.

* Or independent Towns, in German, *freye Reich-Städte*. || By Instr. Pacis Westph. Art. V. §. 9.

Q. 16. What if the Emperor's Consent obtain'd to a Decree of the States ?

A. Then there are made Decrees of the General Diet and of the Empire, which are establish'd either separately, or in the Form of an *Imperial Recess*.

Q. 17. What Matters are deliberated upon the General Diet ?

A. By Virtue of the Peace of *Westphalia*, the States have a Right to vote in all Consultations about the Affairs of the Empire, especially 1. As to enacting Laws; 2. Examining them; 3. Declaring War; 4. Laying on Taxes; 5. Raising new Levies; 6. Providing Quarters for the Troops; 7. Building Forts within the Dominions of the States; 8. Reinforcing the old Garrisons with Troops in Name of the Public; 9. Concluding a Peace; and 10. Forming Alliances.

Q. 18. If private Matters (for Instance, an Amendment to be made in the Form of Procescs) are to be brought before the General Diet, is this binding on all the States ?

(a) Art VIII. §. *gaudeant*. 2.

(b) Moreover *Rudolphus Heiden*, the Author *der Grundfeste*, p. 3. c. 1. gives us a long Detail of these Matters. But as he writes in Favour of the Princes, and not the Electors (having been Counsellor to the Duke of *Saxe-Vinat*, vid. *Bedencken über die Grundfeste*, p. 2.) that List contains Matters that are usually consider'd as Imperial-Electoral, or at least in the sole Exercise of which the Electors have hitherto been (wrongly) consider'd in the Capacity of Princes, vid. *supra*, No. 2. c. 2. Q. 9.

A. Then

Then such as think it their Interest that the common Form of Process, received in their Territories, should not be altered, usually enter Protests. Thus when a Form of Process was appointed by the Recess of 1654, the Elector of Saxony enter'd a Protest, that the Right of his Ho[use] might suffer no Detriment; which yet seem to have been done for Caution's Sake, rather than from any Necessity there was for it, private Matters are not properly the Subject of the Deliberations of the General Diet, as the Power of the States within their respective Territories must be left untouched such Matters, as are indifferent with respect to the common Welfare of the whole Empire.

Q. 19. How long do the General Diet usually last?

A. Formerly they were ended in a little time, and seldom lasted for twelve Month together. The late Diet has lasted since 1692 down to the present time: And has like to have become perpetual.

CHAP. II.

Of the ordinary and extraordinary Deputations of the Empire.

GENERAL POSITIONS.

I. In order to facilitate Affairs that require Dispatch, there is an *ordinary Deputation* from the Empire.

and II. A.

2. What

Whatever is concluded by this Deputation with the Consent of the Emperor and of the Colleges, *viz.* the College of the Electors and that of the Princes, is made a *part of the Deputation*, which is of the same Force with the other Recesses of the Empire.

In the General Diet there is sometimes made an *extraordinary Deputation*; for Instance, when Ambassadors sent to the Empire to have a public Audience.*

Q. 1. Are there no other Ways of dispatching Business of common Concern to the Empire than in the General Diet?

A. Yes; by the *ordinary Deputation* of Empire, where Business, that concerns the whole Empire, is dispatch'd by a few, sent out from the States for that Purpose; and who represent them all.

Q. 2. How many Deputies are there?

A. In the General Diet at Augsbourg, in 155 (to which this Institution owes its birth) the Number of Deputies was pretty much limited, *viz.* to six Electors, four Princes, one Prelate, one Count, and two Imperial Cities. To these in Process of time others were added: Till by the Peace of Augsbourg it was agreed, that there should be an equal Number of Deputies from the German Catholic and from the Protestant

See Quest. 8. here.

(4) Art. V. §. 18.

States;

States, and the chusing of them was refer'd to the next General Diet. In the Diet, therefore, in 1654, this Affair was resum'd, and the Determinations of these Deputies inserted in the Recess of the said Year §. 10.

Q. 3. Who calls together this Deputation of the Empire?

A. The Elector of *Mentz*, and that often as he thinks the Exigencies of the Empire require it. Formerly they were not meet but at *Francfurth* on the *Maine*; this Day they may meet any where.

Q. 4. Is the Emperor also invited to the Meeting?

A. Yes: And he (if present) or his Commissaries, have the Privilege of proposing the Business to be transacted.

Q. 5. How do they proceed in the Meetings?

A. The States form themselves into two Classes; the one that of the Electors, and the other that of the rest of the States: And to come to any Determination in those Deputations it is necessary, that these two Councils agree between themselves, and that the Emperor's Deputy concur. If they agree, then their Resolution is drawn up by the Elector of *Mentz*, into the Form of a Recess, which is call'd a Recess of the Deputation, and of the same Force with the other Recess of the Empire.

¶) By R. J. d. 1570. § derobalben soll, &c.

Q. 6. Do these Deputations expire upon the Death of the Emperor?

A. No; as they do not depend upon him alone.

Q. 7. Does the Visitation of the Chamber-court likewise belong to these Deputies?

A. Yes; a List of the Visitors may be seen at the Bottom of the Recess, *An. 1654.*

Q. 8. Besides the ordinary Deputations, are there not also extraordinary ones, while the General Diet lasts?

A. Yes; as the common Method of dispatching any Business in the usual Form is dilatory and long-winded. Hence some Affairs require Deputies from the three Colleges, and an equal Number of *Roman* Catholics and Protestants to determine them; and this is call'd an extraordinary Deputation, such as Committees are in the Houses of Parliament in Great Britain. The Author of the Treatise entitled *Die Grundfeste*,^c gives a Detail of the important Affairs that have been determin'd this Way. Thus when Ambassadors are sent to the Empire, a select Number are sometimes deputed from the General Diet, to give them public Audience, which according to the same Author^d was in particular the Case at *Ratisbon*, with respect to M. de Gravell, the French Ambassador.

(b) P. 2. c. 7.

(d) in 1. c.

nowe encre ande ynglyd. I. Apri. 16. D. 3. 0
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CHAP. III.

Of some particular Meetings,
GENERAL POSITIONS.

1. THE States have a Right of assembling themselves at Pleasure. This arise the Meetings of the Electors and those of the Princes.

2. These Meetings may be holden either the Emperor will or not; but if meet according to his Desire, he is com

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present by his Deputies.
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Q. 1. Besides the above-mention'd General Meetings, are there not likewise particular Meetings of certain Colleges? A. Yes; and the chief among them the Meetings of the Electors, about which you may see t. 12. of the Golden Bull.

Q. 2. Is the King of Bohemia like present at those Meetings? A. By him.

A. No; unless there was to be a Consultation about chusing a King of the Romans.

Q. 3. Upon what Account are these Meetings appointed? A. There are pretty general and sufficient Reasons assign'd in the Golden Bull, viz. to deliberate about the Safety of the Empire, and of the World itself.

(6) In German Churfürsten-Tage.

(7) In German Fürsten-Tage.

(8) c

der *Churfürstl. Bruderl. Verein.* in 1521, the Reason is expressly mention'd, namely, *the Interest and Exigencies of the Holy Roman Empire*, and which is still more particularly explained in the Emperor *Joseph's* Capitulation^f, viz. *to consider and deliberate about their Grievances and other material Affairs of theirs*: Whence it may be conjectur'd, that what relates to the Prerogatives, Dignity and Rights of this College, makes up the whole of the Business in these Meetings.

Q. 4. How many Electoral Meetings of this Sort have been instituted?

A. Rachelius ^g gives an Account of several.

Q. 5. Have the Princes likewise a Right of meeting separately by themselves?

A. Such Meetings of the Princes are not uncommon in the Empire, and on the Occasion of creating a ninth Electorate, there was at that time a Meeting of the Princes at Norimberg, and also lately, on the Occasion of drawing up the present Emperor's Capitulation, in which the Princes always attempt to have a Hand, tho' hitherto in vain.^h

Q. 6. May the rest of the States do so too?

A. Yes; the Imperial Cities may; and the Counts of the Empire too: Nay, the immediate Gentry of the Empire have been, ^{out of Mind,} in Possession of a Right of appointing Meetings, call'd Equestrian Meetings.

(*f*) Art. VI. (*g*) in *Dissert. peccul. de Diætis Ecclesiast.* (*h*) *vid. B. I. ch. 3. qu. 4.* — 10.

CHAP. IV.

Of the Circles of the Empire and the
Circular Diets.

GENERAL POSITIONS.

1. **S**UCH a vast Body, as the Empire requir'd to be divided into certain Circles, which was done in Maximilian I. Time into ten Circles.

2. The Executions in the Empire against the States belong to the *Directors and Generals* of the Circles.

3. But that Law of the Empire, or Decree about the Manner of the Execution, it is full of Windings, it is not suited to the present Times.

4. With respect to the Circles there are several Defects; and consultations about renewing the Marches of the Circles are neglected, to the no small detriment of the Empire.

Q. 1. How many Circles of the Empire are there?

A. Maximilian I. divided the Empire into ten Circles. At the General Diet of Augsburg in 1500, with the Consent of the States he first appointed six Circles, to which afterwards in 1512 he added four more.

Q. 2.

Q. 2. Before that Time was not the Empire divided into Circles ?

A. The most ancient Division of *Germany* under the *CAROLINGI*, was into seven Provinces, which, doubtless, was the Basis of the Division that was made under *Maximilian*. But the Division of *Germany* into ten Circles, and settling their respective Marches under *Maximilian*, is properly to be ascrib'd to the Pleasure of the Empire.

Q. 3. What was the Reason of this Institution ?

A. That every Thing might be done with the better Order in the vast Body of the Empire, as the Circles comprise different States and different Dominions, associated together for their common Tranquility and Advantage, yet still without Prejudice to that general Bond of Union there is between all the Members of the Empire.

Q. 4. What Members does each Circle consist of ?

A. It would be tedious to give a particular List of them, as this may be seen in every political Writer ; especially *Zeiler** has with a deal of Labour given us a List of the particular Members of each Circle.

Q. 5. Does *Bohemia* belong to a particular Circle ?

A. No ; and what *Goldastus* affirms as to

* in a Treatise publish'd in *High German*.

the 12th. Circle of *Bohemia* has no Foundation in the public Records. In the mean time some Change was near being made in this Matter, as there were great Numbers of Treatises publish'd during the present General Diet, about admitting the late Emperor *Charles VI.* as King of *Bohemia* to all the Dignities of an Elector; and on the other Hand requiring of *Bohemia* to pay Taxes as for a Circle of the Empire.* There are likewise States which are not compris'd in any Circle, for Instance, the Dukedom of *Savoy*, and the County or Principality of *Montbeliard*.||

Q. 6. What are the Names of the Ten Circles?

A. The *Upper and Lower Saxony*, the *Upper and Lower Rhine*, *Austria*, *Franconia*, *Westphalia*, *Suabia*, *Bararia*, and *Burgundy*.

Q. 7. Has one Circle the Precedence of the other?

A. In the Laws of the Empire they are mention'd promiscuously, and there is no Foundation for the Precedence of the one to the other.

Q. 8. How are the Circles govern'd?

A. Every Circle has one or more Directors and a General. The Office of the Directors consists chiefly in this, namely to call the

* See above B. I. c. 2^o num. 4.

|| In French *Montbeliard*.

† Call'd *Principes Convocatores*.

States and Members of the Circle together to the Circular Diets, and therein to preside and propose the Business that is to be done.*

Q. 9. What is the Office of General of the Circles?

A. This Office is not, like that of Director, annex'd to some particular Family or Territory, but the General of a Circle is chosen by the Majority of Voices: And hence the Offices of Director and General of a Circle may meet in the same Person. Sometimes the General has Assistants, the Number of which is determin'd by each Circle.

Q. 10. Does the Execution of Decrees perfectly belong to the Directors and Generals of the very same Circle, where it is to be done?

A. It is expressly determin'd by the Peace of *Westphalia*, † that the Execution is to be trusted always to the Directors and General of the Circle, in which it is to be perform'd.

* But in some of the Circles there are pretty intricate Disputes as to the Directorship. Thus the Bishop of *Munster* would fain exclude the Elector *Palatine* from having a Share in the Directorship of the *Upper Rhine*, with respect to the Principality of *Simmern*; and the Kings of *Sweden*, as Dukes of *Deux-ponts*, did dispute it the Elector *Palatine*; and with all of them again the Landgrave of *Hesse-Cassel*. There were likewise Contentions as to the Directorship of the Circle of *Westphalia*, between the Elector of *Brandenburg* and the Elector *Palatine*, which were determin'd by Treaty, in 1666, in such Manner, that the Directorship is in common between both and the Bishop of *Munster*.

† Art. XVI. §. *imprimis* 2.

and whenever the Emperors have intrusted such Executions to other Princes, not intituled to them, the Directors and Generals of the Circle have taken Care to assert their Rights, upon Occasion even with arm'd Force.

Q. 11. Do the Circles of the Empire labour under no Defects?

A. Some do justly complain, 1. That the Decrees of the Circles begin daily to fall into Contempt. 2. That Executions in the Circles, for the most Part, are not carried on in Earnest, especially against the more powerful and that that Way of Executions in the Circles (prescribed by the Decree to that Effect, inserted in the Recess of 1555 *) is perplex'd and not suiting to the present times. Hence a Proposal was made to make a new Recess about it. 3. The almost entire Omission of the ancient Correspondencies between the Circles may be reckon'd as a Defect. 4. The clashing of Interests, that readily arises between Members of a Circle, by being of different Persuasion, or of unequal Strength. 5. The mutual Spirit of Contradiction, that subsists between the Circles and the Imperial Chamber.

Q. 12. For what End are the circular Diets appointed?

A. They are appointed by the States of the respective Circles, in order duly to dispa-

* To which add Capit. Leop. & Josep. Art. II.

the Business belonging to them: Which Diets have, on Account of some Obstacles, been omitted, to the no small Prejudice of the Welfare of the whole Circle, as has been the Case for some Years past in the Circles of the *Upper and Lower Saxony*; to remove which Obstacles, there were held serious Consultations in the late General Diet at *Ratisbon*, upon the Occasion of erecting a public Treasury in the Empire, in Case of War and Self-defence. And before the circular Diets of the most considerable Circles be restor'd to their pristine Vigour, there remains but little Hopes of the Success of a thing, so manifestly tending to the Safety of the Empire.

Q. 13. Do not the Circles likewise hold Meetings between themselves?

A. In the Imperial Recess of 1571. §. 28. is urged the annual Meeting of the neighbouring Circles, in order to assay Coin: Hence they are call'd *Corresponding Circles*, which are divided into three Classes. In the First Class correspond the Circles of the *Upper and Lower Rhine*, and the Circle of *Westphalia*. In the Second the Circles of the *Upper and Lower Saxony*, to which is usually join'd the Circle of *Westphalia*. In the Third, the Circles of *Franconia, Suabia, Bavaria, and Austria*.

CHAP. V.

*Of the Execution of the Decrees of the General Diet.***GENERAL POSITIONS.**

1. **T**HAT THE Execution of the Decrees of the Empire is commonly defective, this in particular against foreign Powers, in case of a War with them.

2. A regular Standing Army to be maintain'd at the public Expence would be exceeding serviceable to the Empire; yet insuperable Difficulties forbid to entertain any Hopes of it.

3. In time of War in the Empire, the Troops may, as they have Occasion, march take up their Quarters, and build Fortifications within the Dominions of the States, that are not able to defray the Expence of building Fortifications or keeping Troops themselves, for their own Defence and the Defence of the Empire.

Q. 1. How is it as to the Execution of the Decrees of the General Diet?

A. This regards either *Foreigners*, the *States themselves*, or *their Subjects*.

Q. 2. How does it regard **FOREIGNERS**?

A. If a Decree has pass'd in the General Diet against Foreigners, the amicable Way is to send Ambassadors in the Name of the

whole Empire: But should it be foreseen, that this Method will prove unsuccessful, then Recourse must be had to War, as there remain no other Methods of acting between these and independent States. Thus several Warrs have been proclaim'd against France, and the Virtue of Decrees of the General Diets.

Q. 3. But in time of War, when regular Troops are wanting, is Germany always provided with a sufficient Army?

A. The Powerful amongst the Sovreigns in Germany in particular, are sufficiently provided with Troops (over and above what they may want for their own Defence) against the Enemy, who is not more powerful than themselves; Standing regular Troops being greater than the German Princes have too much, or too little of. But here the Questioning about a Standing Army kept up by the whole Empire (consider'd as an united Body), the proportionate Expence of every Member thereof, and for the Defence and Use of the Whole: In time of Peace there is no Standing Army, Artillery, Field-Treasury, &c. at all; which is one great Defect often complain'd of, and never yet mended. But when by unanimous Consent, or at the least a Majority in the Empire, a War is proclaimed, then first an Army is raised, in such a manner that every Circle is to furnish a certain Contingent, compos'd again of many small Contingents, furnish'd by every Member.

abey

ber of the Circle according to his Ability, which is settled in a *Matricula*, by the Way of an Account, call'd *Roman Monibz*. But all this requiring the Consent of many Heads of a different Way of thinking, before it can be refolved, and the Emperor being hardly enabled with a real Power actually to command the States, most especially the powerful ones among them, to put their Resolutions in Execution, the raising of this Army goes on but slowly; so that for the most Part the Enemy is already at Hand, or even in the Centre of the Empire, before there is an Appearance of Resistance; and when the Army is raised, then their Pay and other Necessaries are wanting.

It is tho' to be observed, that we do not deny the Emperor's being enabled, and even bound by the Laws of the Empire to all Members of it, to execute the Conclusions of the General Diets as to this Point, because the 17th Art. *Capit. Joseph.* may, among others, give us an Instance to the contrary where it was enjoined the said Emperor *Joseph*, that he ought not to remit or excuse any one State his Quota; but every Body will allow us, that, besides the small States, Free Cities, Gentry, Sovereign Lords, and so many very petty Spiritual and Temporal Princes, the Members of the Empire, who have a particular Interest in the War, do what they please, unless they be compell'd to act otherwise.

Q. 4. Have not several Proposals been made about keeping up a Standing Army in Germany?

A. Yes; and it would be good if they had been as happily put in Practice, as they have appear'd in Public. Thus in 1695 there were solemn Consultations held at Cologne, about keeping up a Standing Army; and from that time this Matter began to be very much talk'd of.*

Q. 5. What are the necessary Consequences of a War in the Empire?

A. 1. To grant a Passage to the Troops through the Dominions of the States, especially those near the Seat of War, and in their March the Troops must do no Damage.

2. To provide Quarters for them in their March, as also Winter-Quarters.

3. To build Forts (in Case of Necessity and according to the Commodiousness of the Situation to annoy the Enemy) even within the Jurisdiction of the States, namely the less

* The same Year there was publish'd a Proposal of the celebrated *Kulpius* to that Purpose, whose Arguments Mons. de Limbach (Ambassador from Hannover to the General Diet, a Man very well skill'd in the Public Affairs of Germany) undertook to refute, and with a pretty deal of Policy represented the Difficulties there were in keeping up a Standing Army in the Empire, according to the State of Germany at that time. To this *Kulpius* wrote a Reply, in which he endeavours to solve these Difficulties. add. *M. Strykii Bigg Dissertationum de Militia Imperii & Militia Circulari.*

powerful ones among them; to do which the Consent of the General Diet is necessary, provided there be no Danger in doing so.

4. To take Possession of the Forts, which are near the Enemy, and situated in the jurisdiction of the less powerful States, manning them with a strong Garrison, and other warlike Stores: Of which we had an instance in the Castle of S. Goari, or Ratisbon, which, on account of the Weakness of the Prince, was in the late War in Queen Anne's time man'd with an Imperial Garrison.

5. In Cases of Necessity the whole Empire, for the common Safety, to exercise an absolute Power (yet still within the Bounds of common Equity,) within the Jurisdiction of the States.

Q. 6. When does an Execution lie in the STATES THEMSELVES?

A. Either 1. By Decrees of the General Diet; or 2. By particular Decrees of a College, *viz.* the Electoral College; or 3. Decrees of a Circle. If the States have previously been put to the *Bann* of the Empire, and War declar'd against them for obstinately opposing the Determinations of the whole Empire, as was the Case in the War in the late Queen Anne's time against the Electors of Bavaria and Cologne, for espousing the Interest of the French King, who declar'd an Enemy to the Empire. But

two latter Sorts of Execution, viz. either by a Decree of the Electoral College, or by a Decree of the Circles, are seldom put in Practice.

Q. 7. When is an Execution directed against the Subjects of the States?

A. If some things have been concluded in the General Diet, that do not concern the Welfare of the whole Empire in General, but only the Subjects of the States, for Instance, Reformation as to some Points of Justice, publishing the Warnings, call'd *Avocatoria**, reforming the Kalendar: For, the States themselves do within their own Jurisdiction put these and the like Decrees in Execution.

* Publish'd by the Parties at War in order to recall their Subjects to their respective Homes.



BOOK V.

CHAP. I.

Of the Courts of Judicature in Germany

GENERAL POSITIONS.



1. ON TESTS, as to Matters of Moment, that happen'd between the States were formerly determin'd or compromis'd in the General Diet, according to Justice and Equity.

2. The Protestant Princes and States are accountable to no Court of Justice in the Empire in Matters Spiritual, as they are call'd, and in matrimonial Affairs.

3. The Princes and States are inviolate to their Persons, and they are subject to no human Tribunal as to Trespasses.

Q. 1. In former Days under *Charlemagne* and the *German* Kings of his Family, what was the State of the Courts of Justice in *Germany*?

A. The Differences that happen'd either in the Royal Families or between them and the States, as also the great Causes of the

States amongst themselves were tried and determin'd in the Assembly of the Lords and Commons, but the smaller Causes were tried by the King or by Commissioners from him. *Conringius*,* whose Abridger is Baron *Puffendorf*,† gives a learned Account of this Matter from the historical Records of the Middle Age: But neither of them say any thing as to the Form of ancient Process in *Germany*.

Q. 2. Pray tell me what is *Fürsten-Recht* in *Germany*?

A. *Fürst* signifies in *High German* a Prince, *Recht* does sometimes answer to the Word *Right* in *English*, sometimes to *Justice*, but here it is of the same Import with *Competent Court*, so that by *Fürsten-Recht* is to be understood the Court, where Princes are to be tried, || and the Definition of it is, a competent Number, if not the full House, of the sovereign Princes and Peers of *Germany*, assembled in a Court of Justice, and that by Command and under the Presidentship of the Emperor, as King of *Germany*, in order to take Cognizance as to their Lives, Dignities, or Estates.

Q. 3. Why do you call them Peers of *Germany*, a Term I have not heard mention'd in the *Roman Empire*?

A. For to translate exactly the *Latin* Word *Pares Curiae*, by which is meant, in the An-

* in *Dissert. de Judiciis Germaniae.* † *de Stat. Imp. c. 5. §. 14.* || *Forum Competens Principum, nals*

nals and public Stile, the States of the Empire, when assembled in a Court of Justice, in order to try a Fellow State; and this *Latin* Word is very frequently used, altho' the *Germans* have not a proper Word in their own Language to express the same thing, as we do by the Word *Peers*.

Q. 4. Why were the Peers required to be Judges of a Prince. I thought the Emperor had been the sole Judge of Princes; and if he had wanted Advice about Points of Law, he might have taken it from Counsellors of his own, who are Lawyers?

A. Altho' the Power of the Emperor over the States, subject to their Crown, was less confin'd in these Days, yet a King of *Germany* never presumed to judge Princes according to his and his Counsellors private Judgment: For it has always been the general Custom in *Germany* (as in most other Kingdoms too) that High and Low were to be judged, every one only by such as were of equal Rank and Condition with himself, and which most especially was a thing to be observed, when Sovereign Princes came to be tried.

Q. 5. What is the Origin of the Name *Pares Curiae*?

A. *Curia* is Court, Court is a Circle of People around the Chief amongst them. *Pares Curiae* are also People in a Capacity (by their Rank) to form around the King Circle.

Circle, call'd a Court, and most especially here in the present Case, entitl'd to the Name of a Court, proper to assist the King in trying another State of equal Rank with themselves.

Q. 6. Does that *Fürsten-recht*, still subsist in Germany ?

A. It does not as to the Cognizance about the Succession to the Great Fiefs,* and as to the Cognizance of Matters of Trespass, *Fürsten-recht* hath not been put in Practice (with the usual Solemnity of the ancient times) since the Days of *Charles V.* who had already undertaken to put the Elector *John Frederick of Saxony* into the BANN of the Empire without a previous Trial by his Fellow-Electors, which that Emperor had no Right to do, altho' he perform'd it in Fact. And it did not happen, but a good time since, that in order to prevent Doings of this Nature, the Electors took Care by the Election of the Emperor *Ferdinand III.* to restrict || the putting a State to the Bann of the Empire to their Consent alone. But the Princes did not think their *Fürsten-recht*, (or Right to be tried no where else but in a Court of Justice, only formed out of their Fellow-Sovereigns) entirely restored by that; therefore to satisfy them it has been provided by the subsequent Capitulations, that no State of the Empire is to be put to the BANN,

* vid. Quest. 7. seq; in this Chap.

¶ By Art. III. of the Capitulation prescribed to him.

without the Privity of the whole Empire. The Manner and Order of putting a State to the Bann was to be settled more exactly in the next General Diet after the Peace of *Westphalia*^a but, (as salutary things for the public Good are often spoken of and seldom put into Execution in the Empire) it has not been done yet.

Q. 7. Does taking Cognizance, therefore, as to the Succession to the Great Fiefs require the Concurrence of all the Princes of the Empire.

A. By plain Passages in the public Acts of the Empire, made at *Worms* in 1521,^b this is reserv'd to the Emperor alone.^c

Q. 8. But would it not be adviseable for the Emperor to decide this Matter by giving previous Notice to the States of the Circle, where the Controversy happens, especially to the more powerful among them ?

A. In greater Causes, and whence Tumult might be apprehended in the Empire, the Emperor is by the express Words of the Peace of *Westphalia*^d left at Liberty to require the Opinions and Votes of some of the Electors and Princes, both of the *Roman Catholic* and Protestant Religion. Hence, at least by the Rules of Prudence, the Emper

(a) vid. Instr. Pac. Art. VIII. Sect. *habeantur*.

(b) Sect. ob *aneb sacben*, &c.

(c) Ord. Cameral. P. 2. Art. 7. Ord. Jud. Aul. tit.

(d) Art. V. Sect. *quoad processum*.

should take the Advice of the Fellow-States of the Circle, which tho' would be no Prejudice to his Prerogative before-mentioned.

Q. 9. To what Court of Judicature in the Empire do the Causes of the Protestant Princes, as to matrimonial Affairs, belong?

A. That the Emperors were formerly Judges in such Cases may, probably, be prov'd from the Example of *Lewis IV.* who pass'd Sentence in the Case of Impotency between *John*, Son to the King of *Bohemia* and *Margaret* Dutchess of *Carinthia*. But as by the Principles of the *Roman Catholic* Religion, the Emperors do now-a-days decline this Province; and as by the Peace of *Westphalia* the Power of the Pope and the Bishops, who assume this to themselves, is suspended as to the Protestant Princes and States, they own no Judge in such Cases, but they cause these Controversies to be decided in their own respective Consistories or Court of Delegates, after having given them a Dispensation from their Oath of Allegiance, of which we have an Instance in the present Duke of *Mecklenburg*.

Q. 10. Would it not be proper to erect a common Consistory for the Protestant States?

A. At the first Consideration of the thing it may seem very proper; but for several good Reasons, arising from the Difficulty

every such salutary thing meets with in the Empire, this Political Scheme is indeed impracticable.

Q. 11. Where are Criminal Causes of the States tried?

A. ^f The Chamber tries in Cases of breaking the publick Peace, and in Cases of High Treason: Which I take to be meant where Complaint has been made by the lesed Fellow-State to the Chamber about Breaking the public Peace, and the Warnings of the said Chamber have not been regarded by the Aggressor. For, Causes regarding the public Peace and Tranquillity of the Empire are to be tried in this Court, but if a Prince trespass, consider'd as a private Person, for Instance, by committing Adultery or Murder, he owns no Tribunal to which he is accountable here on Earth. Formerly, five or six Centuries ago, it is true, they were wont to carry Dogs, or to suffer other ignominious Punishments. But such things are to be referr'd to the Rudeness of an Age, in which it was the Custom to put out the Eyes of Kings, and afterwards throw them into Monastery.^g

(f) By Ord. Cam. Sect. So jemant.

(g) vid. *Cæsarinius Furfnerius's excellent Dissertation de Suprematu*, p. 30. J. P. Prud. Diff. XI. Sect. 17. 18. vid. *supra*, B. III. c. 3. Q. 18.

CHAP. II.

Of the Court of Austrage.*

GENERAL POSITIONS.

1. THE Tribunal in *prima instantia* among the States is the Court of *Austrage*.

2. From this Court there lies Appeal to the Supreme Courts of Judicature, *viz.* the Chamber and the Aulic Council.

3. In Differences that happen between a Prince and his Subjects, the latter have in certain Cases a Privilege of applying to the Court of *Austrage*.

Q. 1. To what Tribunal may the Differences between the Princes and the States be brought to be determin'd?

A. The Tribunal in the first Instance is the Court of *Austrage*, which is appointed, either by Convention or by Law: Where there is a Court of *Austrage* by *Convention* in an illustrious Family, or between some such different Families, *that by Law ceases*.

Q. 2. What do you call the Court of *Austrage*?

A. They are Judges chosen, according to the fundamental Laws, by the immediate States of the Empire, in order to determine certain Differences in the first Instance.

* In Latin *Judicium Austragarium*.

Q. 3. Have all the States promiscuously in one and the same Manner the Privilege of a Court of *Austrage*, according to Law?

A. No: For ^a they are divided into Courts of the first and second Class. To the former belong Electors, Princes and Persons of Princely Rank: To the latter belong Prelates, Counts, Barons and the immediate Nobility. Those belonging to the first Class, when conven'd by Persons of any Rank whatever, have ^b the privilege of this their own particular Tribunal of *Austrage*. Those belonging to the second Class, when conven'd by one belonging to the first Class or by any belonging to their own Class, have ^c the Privilege of the Court of *Austrage*. But if the latter be conven'd by a mediate Citizen, or by an Imperial City, that has no privilege of the Court of *Austrage*, this ought to be done before the supreme Court in the Empire, viz. the Chamber and the *Aulic* Council.

Q. 4. What if a City would convene the Prince, who is their Sovereign?

A. If the Prince be Defendant, he must be conven'd before the Court of *Austrage*. But if he be Plaintiff, that City must appear before its own Sovereign's Treasury, or other Court of Justice, but then the Judges are

(a) In Ord. Cam. p. 2. T. 2. (b) By Ord. Cam. l. 4. Sect. fin. (c) By Ord. Cam. p. 2. tit. 3. & 5.

in such a Case, free from their Oath of Allegiance to the Prince.

Q. 5. Have the Imperial Cities too this privilege of a Court of *Austrage*?

A. They may convene Princes belonging to the first Class. before this Court. But they cannot pretend to be conven'd there, themselves, unless the Cities have a peculiar Privilege for it, which some few of them have.

Q. 6. What Causes belong to this Court?

A. Civil Causes, which may afterwards be appeal'd to the two supreme Courts of *Germany*, viz. the Chamber or *Aulic* Court.

Q. 7. Are appanaged Princes to be likewise conven'd before this Court?

A. It does not appear, that this Court can have any Jurisdiction, either as to the Wives or the Children of the reigning Prince, as in their private Capacity these are under his Territorial Jurisdiction.

Q. 8. But what if both Parties are not satisfied with the Sentence?

A. Then it may be appeal'd to the Chamber or *Aulic* Council.



CHAP. III.

Of the Imperial Chamber.

GENERAL POSITIONS.

1. **T**HE Chamber does not derive its Authority from the Emperor alone, but from the Empire at the same Time, and it is establish'd by the common consent of the Head and Members.

2. Hence it does not interfere with the Sovereign Authority of the States, with their own Provinces.

3. The manner of proceeding in the Court is slow, and the Executions are for the most Part defective.

4. The Subjects of Electors do not appear to the Chamber, but every Elector has a particular Court of Appeals.

Q. 1. What do you call the Imperial Chamber?

A. It is a supreme Court of Justice of the Empire, establish'd with the Consent of the Emperor and the States, in order to distribute Justice between the States and the Subjects, according to a certain stated Rule.

Q. 2. When was this Court instituted?

A. In the General Diet at Worms 1495 under the Emperor *Maximilian I.* enacting the public fundamental Law of the Empire.

Empire, call'd Public Peace, by which that former disorderly Way amongst the States of Germany of slighting Justice and the Laws, and in Room of that, challenging and revenging themselves, was abolish'd.

Q. 3. Is the Chamber dependent on the Emperor alone ?

A. No ; it is dependent on the States too.

Q. 4. But yet are not the Sentences pass'd in the Emperor's Name only ?

A. Yes ; and he does even in the Qualification of Emperor issue Mandates to himself, as Arch-Duke of *Austria*, in the following Style: *We Charles, Roman Emperor, order
thee, Charles Arch Duke of Austria, &c.* * of which we had an Instance in *Charles V's* Time.

Q. 5. How many Members does the Imperial Chamber consist of ?

A. The principal Person is the Judge of the Chamber, who ought to be a Native of Germany, and in Rank a Prince, Count, or Baron : He is appointed by the Emperor, and he may be either a *Roman Catholic*, or Protestant† : He has a Salary of 4400 Dollars allow'd him. After him are the four Presidents, two of them *Roman Catholics*, and two of them Protestants, and that by Virtue of the Peace of *Westphalia* ‖, who are

* Meaning all the Time himself, by the Name *Charles Arch-Duke of Austria, &c.*

† By *Recess. Imp. An. 1654. § 11. ¶ Art. 5. § 33.*

also appointed by the Emperor. The Salary allow'd each of them is ^{*} 1371 Dollars. The Salary of the Assessors (26 of them to be *Roman Catholics*, and 24 *Protestants*) should according to the Peace of *Westphalia*, be 500 Dollars.

Q. 6. Who pays the Salaries of the Officers of the Chamber?

A. The States, and that according to a particular Matricula for that Purpose. This Matricula, as it particularly relates to the Expence of the Chamber, is not to be confounded with the rest of the Matricula's of the Empire ^{§.} But the Officers of the Chamber have often made public Complaints about Deficiency in the Payment of their Salaries.

Q. 7. What Causes are decided in the Imperial Chamber?

A. Not only those between the States and the Princes (except the spiritual, matrimonial, and feudal Causes) but likewise Differences that happen between their Subjects, as to Matters civil, which may be more fully learn'd from the Ordinance of the Chamber to that Effect.

Q. 8. Are the Sentences, especially those pass'd between the more powerful States, readily put in Execution?

^{*} By the said Rec. Imp. § 11. + Art. 5. § 13.

¹¹ Vide Recess. noviss. fest. 9.

[§] Vide Praefat. Matriculae revisie quae exstat in fine Grundfeste.

A. As to this there are several Directions in the Ordinance of the Chamber. Yet Experience shews, that the States, who trust to their own Power, do usually pay no Regard to Decrees of the Imperial Chamber. Hence there have been frequent Consultations held, both in the past and present General Diets, about a more effectual Method of putting their Decrees in Execution, but not with the desir'd Success, as is the Case in the Diet with Respect to Things of this Nature.

Q. 9. May the Subjects of all the States promiscuously appeal from their respective Courts of Justice to the Imperial Chamber?

A. No; for, * the Electors have a Privilege of Non-appeal from them. Hence the Subjects of Electorates cannot appeal to the supreme Courts of Justice in the Empire: But the Subjects of such Provinces, as are not Electorates, altho' subject to Sovereigns, who are Electors, may appeal to them. The same Thing is to be said as to the Subjects of the Duke of Saxony: The Subjects of the rest of the States can appeal in all civil Causes, that amount to a certain determinate Sum.

Q. 10. What Sum is it that is appealable?

A. It varies in the respective Countries of the States, according as the Privileges they have obtain'd to that Effect are more extensive, or more limited.

* By Tit. II. of the Golden Bull.

Q. 11. Upon Sentence being once passed in the Imperial Chamber, is there no Room for an Appeal?

A. No. Yet in the mean time there is Relief by a Petition for *reviving the Sentence* *; namely, if the Cause be not under 2000 Dollars, exclusive of the Interest of it, + and the Petitioner does (in Case he should lose the Cause) deposit a certain Sum. Then in such a Case he may draw up a Petition to the Elector of *Menz*, in order to have his Cause revised, which then is tried over again.

Q. 12. Where is the Chamber-Court holden?

A. At first it was holden at *Francfurth* on the *Maine*: At the General Diet of *Augsburg*, An. 1530, it was order'd to be translated to *Spires*. Thence down from the Peace of *Westphalia*, there were frequent Consultations held about translating it again to another Place; but, as usual, there was nothing done in it, till in the War with *France* the Town of *Spires* was ruin'd; wherefore, since An. 1680, it could not be holden at this Place any more; but it was not agreed where to translate it. Hence Matters were for 13 Years together all in Confusion, till, at length, An. 1693, Judgments began to be given at *Wetzlar*, where this Court of Justice is holden to this Day.

* By Rec. Imp. An. 1654. sect. 123.

+ By sect. 127. of the said Rec. || 16. sec. 126.

Q. 13. But can a Subjection of the Princes and States, and of their Subjects to the Courts of Justice in the Empire, be reconciled with their Sovereign Authority and Dignity in their respective Countries?

A. This is no Derogation from their high Privileges, as it was done by common Consent.*

* In like Manner the League that all ~~States~~ entered into (by which the General Diet or great Council, call'd *Amphibitionum*, was instituted) appointed one Tribunal for trying all public Causes, while the Sovereignty of each Commonwealth remain'd untouched.

CHAP. IV.

Of the Aulic Council.

GENERAL POSITIONS.

1. **A** Nother supreme Court of Justice in the Empire is the *Aulic Council* at *Vienna*, which has a concurring Jurisdiction with the Imperial Chamber.

2. Hitherto the Form of Process, the appointing of Assessors, and the ordering of other Matters in this Court, have solely depended on the Emperor: While the due vigilance of the States in concurring therein has been diverted by the Animosities between the different Parties among them.

3. Some Protestant Assessors have been taken into this Court, in order to satisfy in some Measure the complaints of the Protestants.

4. From the Sentences of this Court Redress or relief is to be got *by a Petition to the Emperor.*

Q. 1. What do you call the other Supreme Court of Justice in the Empire?

A. The Emperor's *Aulic Council*, which exercises a concurring Jurisdiction with the Imperial Chamber.*

Q. 2. On whom does this Court depend?

A. Hitherto solely on the Emperor, to whom alone the Assessors do likewise swear Allegiance.

Q. 3. Do not they likewise take an Oath to the Elector of *Menz*.

A. The Vice-Chancellor, the Protonotaries and Secretaries of the Chancery-Court of the Empire do, it is true, take an Oath to him, but the Assessors of the Aulic Council do not. In the mean time the Elector of *Menz* may, as often as he thinks it proper, appoint a Visitation of the Aulic Council. But it is to be regretted, that the salutary Provisions made there are without success, and there has been no Visitation ever appointed.

* By Rec. Imp. An. 1651 Sect. 166. & by Cap. Leop. art. 42. ^{† See Inst. Pac. Westph. 2nd Sect. 56.}

Q. 4. Who was the first that instituted this Council?

A. Whatever some affirm of its Antiquity, *Ferdinand I.* brought it into the Form of a regular Court of Justice, having in 1549 publish'd an Ordinance about it in several Heads or Articles, to which some more were added by *Maximilian II.* and some alterations made to them by *Mattbias* in 1614. At length in the General Diet at *Ratisbon* in 1654, *Ferdinand III.* made some amendments and additions to them, according to some desires of the States.

Q. 5. What were the reasons for the solemn restoring of this Court?

A. It might have been this, *viz.* that the Chamber might not have the sole Right of Judging in the greater Causes.

Q. 6. Are Processes carried on in this Court, according to the Ordinance of the Imperial Chamber?

A. No. As to the Form of Process there is prescrib'd a particular Ordinance, made by the Emperor alone: The States should by Right have had a Share in the making of it, but, on account of the animosities of the different Parties among them, they have not sufficiently consulted their own Liberty and Dignity in this Case.

Q. 7. Is not there much the same Number of *Roman Catholic* and *Protestant* Assessors in the Aulic Council, as in the Imperial Chamber?

A. By

A. By the Ordinance of Ferdinand III. the number of Assessors, including the President, is restricted to Eighteen. In Maximilian II. and Rudolph. II. his Time some of the Assessors were of the Protestant Religion: But under Ferdinand II. and III. there were none of them Protestants. Had the number of Protestant Assessors been expressly determin'd by the Peace of Westphalia * there would have remain'd no difficulty. In the mean Time, on account of the complaints of the Protestant Princes and States, afterwards there was applied a remedy, either in earnest or for Fashion's sake.

Q. 8. How are the Assessors divided?

A. Into two Benches, viz. one of Noblemen and the other of Commoners, tho' the President ought always to be a Nobleman.)

Q. 9. Is the Aulic Council the same with the Emperor's Privy Council?

A. No: Tho' controverted Causes, where some political Views interfere, are commonly referr'd to the Emperor's Privy Council: Which method deserves to be greatly commended for its Policy, but not for its impartiality; and is therefore expressly prohibited in Capit. Leop. & Josep. art. 42.

* Art. 5. Sect. 54. In Ordinat. Jud. Avi- sit. 1. Wir Wollen.

¶ Which and other Matters relating to the Manner of their Sessions, the Form of Proceeds, &c. Mr. Uffenbach has given us at large in Tr. de Judicio Aulico.

Q. 10.

Q. 10. What are the Conveniences and Inconveniences of the Aulic Council before the Imperial Chamber?

A. Among the Conveniences is reckon'd the following, namely, that tho' ProcesSES be more expensive in the Aulic Council than in the Imperial Chamber, yet this is compensated by the summary proceedings therein. Whereas on the other Hand there is no end of litigations in the Imperial Chamber.

Q. 11. Is there no suspending the sentences of the Aulic Council.

A. Yes: By a Petition to the Emperor, by Virtue of the Peace of *Westphalia*,* which has also the Force of a Suspension.

* Art. 5. Sect. 55.

CHAP. V.

Of the *Rotbweil Court*.

GENERAL POSITIONS.

THIS Court has a Jurisdiction only in some Circles of the Empire.

2. Yet most of the States in the Circles are exempted from its Jurisdiction.

3. The States have sometimes urged the abolishing of this Court, and there are no good Reasons against it.

4. Yet,

Q. 4. Yet considering the present State of the Imperial Chamber, it is better to keep it up.

Q. 1. Does the *Rotweil* Court also belong to the supreme Courts of Judicature in the Empire?

A. Yes, in its Way, as by the Emperor's Authority it has Jurisdiction in some of the Circles in *Germany*.

Q. 2. What Circles does it belong to?

A. To the Circles of *Austria*, the *Rhine*, *Franconia* and *Swabia*.

Q. 3. What Members does it consist of?

A. Of a President, which Dignity is hereditary in the Counts of *Swarzenberg* (now that the Counts of *Sultz* are extinct) of Vice-Presidents and of Assessors.

Q. 4. What causes has it Jurisdiction in?

A. In civil and criminal Causes, but not in feudal and spiritual ones.

Q. 5. But are not some exempted from its Jurisdiction?

A. There are few or none of the most powerful States in the said Circles, who are not, together with their Subjects, exempted from its Jurisdiction.

Q. 6. Can there be an Appeal from the Court?

A. Yes; and that to the Imperial Chamber or Aulic Council*.

* By Rec. Imp. An. 1570 Sect. 71. and Capit. 14. Art. 18.

Q. 7. Has the abolishing of the *Rotbweil* Court been sometimes wanted?

A. The States have often wished to suppress it; yet, in the mean time, till an Amendment shall be made in the present languid State of the Imperial Chamber, it is tolerated on Purpose.

BOOK VI.

CHAP. I.

Of the CEREMONIAL PART of the CONSTITUTION.

GENERAL POSITIONS.

1.



1. **HERE** is a ceremonial Part of the Constitution, in as far as a certain Degree of Honour is, by Means of Ceremonies, pointed out as belonging to some particular Person, or Office.

2. Ceremonies constitute a Part of a higher Branch of Science, which is cultivated in the Courts of Princes by the Masters of the Ceremonies.

3. On Account of the different Dignity and Power of the States, there have hitherto arose several inextricable contests as to Ceremonies.

4. In Ceremonials between Princes, there is a great Regard paid to actual Possession.

5. The Treatises on the diffuse and pretty nice Apparatus of Ceremonies, that we find

BOOK

in *Gregory Leti*, *Paris de Graffis*, *Vicquefort*, and in *Theatro præcedentia & ceremoniali Brandenburgico & Palatino*, do not exhaust all the Parts of this noble Science.

Q. 1. Are Ceremonies in great Esteem at this Day ?

A. Tho' Persons of a scholastic Turn may look upon the Solemnity of Ceremonies as an empty idle Affair, yet that the Science of Ceremonies is at this Day very much cultivated by the fine Genius's in the Courts of Princes, is pretty evident from the Institution of the honourable Office of *Master of the Ceremonies*. So that Ceremonies are look'd upon as a Branch of a higher Science; and referr'd even to the Negotiations of a Kingdom, and the Authority of Princes: And, therefore, they have been wont to be publickly observ'd, as well as the material Points themselves.

Q. 2. Does not the Matter of the Ceremonies labour under any Difficulties ?

A. Yes; under several: As a great Part of the Show of Ceremonies has not been entirely brought into one regular System: Besides, the Principles of regulating these Ceremonies seem to be unsettled, and on Account of the various Contrivances of the more powerful Courts, that from thence pursue their own Interest, they are purposely render'd intricate and perplex'd.

Q

Q. 3.

Q. 3. How may the Right as to Ceremonies in the Empire be divided?

A. Into Solemnities and Ceremonies that have been settled

I. By the public Laws or Conventions, and

II. Into such as are to be paid according to the Custom of the Age; either

I. To the Emperor and to the States, and illustrious Personages themselves; (and, as having a Share in the Government of the Empire:) Or,

II. To their Representatives.

Q. 4. What are the Ceremonies appointed by the public Laws?

A. They are such as belong, either to the Emperor, or the Electors, or to the Prince and the rest of the States of the Empire.

Q. 5. How do they belong to the Emperor?

A. As they are Solemnities and Ceremonies appointed by the Golden Bull and the other fundamental Laws of the Empire, as to his Election and Coronation.

Q. 6. What are they?

A. As they are not call'd in Question there is no Occasion to give a bare Account of them. They may be best learn'd from the particular Descriptions given of the late Acts of the Election and Coronation of the Emperor.

Q. 7. What Ceremonies belong to Electors by the public Laws?

A. B.

A. Besides the highest Dignity in the Empire, next to the Emperor, and that by Virtue of the Golden Bull, their Magnificence does chiefly appear at the Election of an Emperor, where, besides the great Offices they bear, each of them sits in the same Dining-Room with the Emperor at a separate Table, that stands cover'd under Canopies, and a splendid Side-board of Gold and Silver Plate just by. All which Particulars are not to be seen in the Furniture of Princes, who sit promiscuously at one Table.

Q. 8. What Right have Princes to Ceremonies?

A. We find nothing particular as to that in the public Laws, only that by them their Power, and the Dignity flowing therefrom, remains untouch'd; and the more powerful among them, who are Sovreigns, do usually claim to themselves an Honour almost equal to that claim'd by Electors, as to which, Custom is the best Guide.

Q. 9. What Ceremonies has Custom introduced?

A. These again are of a two-fold Kind. Some Ceremonies are shown the Emperor in Person, and others are shown to his Ambassadors. The same thing is to be said as to the appearing of the Electors or Princes in Person, or by their Ambassadors. Of the former Kind, are such as are paid to Sovreigns on Account of their Title and other Ceremonials,

monials, and those which are shewn to Princes in Person are not much short of those shown to Electors in Person.

Q. 10. What are the usual Solemnities, for Instance, when an Elector or any other Prince pays the Emperor a Visit at Vienna?

A. As to the solemn Manner of their Reception, as also the other Ceremonies us'd at public Conferences, at Entertainments and at private Interviews, they may be learn'd from the particular Descriptions that are given of such solemn Acts.

Q. 11. What Ceremonies may public Ministers pretend to have paid to them ?

A. The Emperor, or the Electors, or the Princes of the Empire, send public Ministers, whose Rights, as to Ceremonies are different, (as they derive their Dignity from the Persons they represent,) according to the different Rank of their respective Constituents.

Q. 12. How are public Ministers divided ?

A. Into such as are in a representative Character, who are properly call'd *Ambassadors*, and they are of the first Class; and into such as are not in that Character (yet have an honourable Dignity allow'd them) who are of the second Class, and they are call'd *Envoy's*, being distinguish'd according to their respective Credentials.

Q. 13. What are the Ceremonies to be paid to the Emperor's Ambassador ?

A. The

A. The chief are commonly as follows, viz. 1. The first Visit to be paid to him, when arrived last, by the rest of the Ambassadors present. 2. A solemn Entry and Procession to his public Audience. 3. A Privilege of being cover'd, and of sitting. 4. The Title of Excellence belongs both to the Ambassador and to his Lady.

Q. 14. Have Electors a Right to send Ambassadors?

A. Yes; whether they send one or more in this representative Character: And they have the above-mention'd Honours (without excepting any one of them) paid to them, even at the Emperor's Court, and at most of the Courts of crown'd Heads, and of free States, as M. Brunneman * proves by Examples in almost every Court in *Europe*. The King of *France* alone has hitherto refus'd to grant the Ambassadors of Electors a solemn Reception, and the Privilege of being cover'd in his own Presence.

Q. 15. When the Emperor writes to Electors, does he style them *Bretbren*?

A. The King of *France*, and other crown'd Heads, make use of this Compellation to Electors. But the Emperor does commonly style Ecclesiastic Electors, **NEPHEWS**, and secular Electors, **UNCLES**.

* In *Diss. de jure ceremoniali circa Legatos* sect. 1.

Q. 16. Have the Ambassadors of Electors, that are of the first Class, Precedence of Princes in Person?

A. * The Ambassadors of Electors ought to have Precedence of the Ambassadors of free Republics and foreign Princes, (except those of crown'd Heads) and even of Princes in Person.

Q. 17. How do the Princes like this?

A. They loudly exclaim against it, and restrict this Priviledge to the solemn Functions at an Election and Coronation. On other Occasions they themselves in Person pretend to precedence to the Ambassadors of Electors.

Q. 18. Do the Princes of the Empire, or their Envoys, give the Title of Excellence to the Ambassadors of Electors at the General Diet?

A. No; tho' it be given them by the Emperor and by foreign Princes.

Q. 19. Have Princes of the Empire a Right to send public Ministers of the first Class?

A. Especially since the Peace of *Niemeugen* this began to be disputed, while the *French* and *English* allow'd their Ministers this Right, and the contested Ceremonies belonging to it: Which gave Occasion to a certain Minister from the Court of *Holstein*, to publish (under the fictitious Name of *Cæsarinus Furst*.)

* By Virtue of Capit. Jos. Art. 5.

nerius) an elegant Treatise, entitled *de Jure Suprematus & Legationis Principum Imperii.*

Q. 20. Do Electors allow the Princes of the Empire a Right to send Ambassadors?

A. No; hence there arise a great many Contests as to the Honour of the first Visit, the Title of Excellence, the Place of greatest Honour, and other Ceremonies between the Ministers of Electors and those of Princes of the Empire.

CHAP. II.

Of the FORM of GOVERNMENT in the EMPIRE.

GENERAL POSITIONS.

1. THE Form of Government in the Empire is neither Monarchic, Aristocratic, nor Democratic.

2. It may best be compar'd with the Form of Government in the United Provinces of Holland, and with that in the Swiss Cantons.

Q. 1. What is the Form of Government in the Empire, whether Monarchic, Aristocratic, or Democratic?

A. No one of those three; nor is there Occasion for puzzling one's Brains, in order to measure the German, or any other Government by Aristotle's Standard, or Rule, as many German Writers will do, who debate one against the other about this Point,

or

or want to find out a Mixture of Monarchy and Aristocracy in the Empire, which is not a quite exact Position neither, but only calculated to beget erroneous Notions of the Government. *Germany* is a Complication of several Princes, Lords, and Commonwealths, spiritual and temporal, powerful and feeble, *Roman Catholic* and *Protestant*, who are all Sovereigns within their respective Territories, and who very nearly enjoy an Independence from a superior Command over them, yet still they do not enjoy it entirely, because united together, as they are by a general Bond, into one Body, of which the Head, (who is more endowed with Royal Title and Parade than with Royal Authority) if supported by the Majority of the Members of the Empire, can rule any single Member in every thing regarding the Welfare of all the united immediate *German* States in General, and in many Things regarding the mediate Members of every *German* State or Territory in particular, most especially in all Cases of Justice that are to be administred; yet all this, according to certain fundamental Laws. This Description of the Form of Government in the Empire is, we believe, that which comes nearest to an exact Definition, a Thing which is hardly to be given of it: So that this Description is nothing but a Sort of Concentration and summary View of what this whole Treatise comprises; and whoever has well acquainted himself

himself with all that has been inculcated in it before, will thereby know the Form of the German Government, and may easily form to himself a Description of it according to his own Way.

Q. 2. With what Form of Government can that of the Empire be best compared?

A. With that of the united *Dutch* Provinces, or with that of the *Swiss* Cantons, both which are just such other Commonwealths as are composed of several independent little Commonwealths; and the Empire differs in nothing from them, but only in having retain'd a King to be the Head of their Body, together with an outward Show of Royal Authority.

CHAP. III.

Of the Interest and Policy of Germany.

GENERAL POSITIONS.

1. **B**Y Policy we mean here nothing other than the promoting of the common Interest of the Empire, by all proper and innocent Means.
2. The Defects and Imperfections of the State of the *Roman* Empire are more palpable in Time of War than in Time of Peace.
3. It therefore would be very necessary to take Care that by all possible Means the Empire be put upon a better Foot as to Self-Defence.
4. If

4. If every State of *Germany* laid to heart the amending the ecclesiastic and political Defects within his respective Territory; it would very much contribute to amend the Defects of the whole *German Empire* in General.

Q. 1. What do you call the Policy of *Germany*?

A. The Skill to promote, according to the Rules of sound Politics, whatever is for the Interest of *Germany*; and on the other hand, to root out whatever does it considerable Prejudice.

Q. 2. Has this any Relation to the Constitution of the Empire?

A. The Constitution of the Empire (that is, the fundamental Laws and Customs relating to the public State of the Empire;) and its Policy, are two different Things, it is true, yet for all that near a-kin; we therefore have thought it not amiss to handle this Matter by the Way of an Appendix. In this Respect a great many Things might be said, had we a Mind to consider the State of the Empire, as a Thing that was now to be form'd, and not as already form'd; as to which last particular Respect, and what conduces thereto, we will speak a few Words.

Q. 3. Is there much to be expected from the Proposals that have been made for amending the Defects of the Government in the Empire, and for promoting its Interest?

A. A great many have undertaken to give salutary Counsels in the Distresses of *Germany*. But with most of them it has happen'd, that tho' at first Sight they have had the Appearance of being serviceable, yet afterwards they have been found to be impracticable from their Contrariety to the Genius of the Affairs of *Germany*.

Q. 4. But what is the Reason that the Defects, which hinder the Interest of the Commonwealth, are not rooted out?

A. Most of them are such as are not owing to Mankind, but such as arise from the State already form'd, and from the Irregularity in the Form of Government in the Empire, the meddling with which State-ulcer is by a more politic than sincere Way of thinking, reckon'd an invidious Task, and very liable to bad Chances.

Q. 5. But do not some give us a more particular Detail of the Defects and Imperfections in the Constitution?

A. That famous Writer, in the Time of the thirty Years War, *Hippolitus à Lapide*,^{*} mentions some Inconveniencies and pretty palpable Defects in the Empire; yet he shews plain Signs of Pique and other Passions, in asserting, that they are solely owing to the Archducal House of *Austria*, of which he has even the Assurance to advise the Extir-

* In his Tr. de vera ratione Stat. German. I. (1)
‘pation,

pation, for which he is chas'tis'd by *Monzambano*.

Q. 6. Does not then *Monzambano*^b allow of some political Diseases in the Empire?

A. Yes; he takes Notice of a great many; the chief of these are, the mutual Animosities between the Emperor and the States, the Looseness of the Bond of Union between them, the private Animosities that subsist between the States, both on Account of the Difference of Perswasion, and the Disparity of their Strength. In a Word, in Time of Peace these Inconveniencies in the Constitution of *Germany* are in some Measure tolerable, which in Time of War cannot but be obvious to every one, and which are, moreover, very much aggravated by *Monzambano* and by *Puffendorff*^c, in Words to the following Purpose, ' The States of *Germany* are slow and cold in their Deliberations, as to public Matters; therefore, they are not able to enlarge the Commonwealth, nay, Self-Defence against the Invasion of an Enemy does almost languish among them, while such of the States as lie a little farther off from the Enemy, look upon such

(a) *De Stat. Imp.* C. 7.

(b) Under the fictitious Name of *Monzambano* is conceal'd the very celebrated Baron *Samuel Puffendorff*, Counsellor at the Court of *Berlin*; and, perhaps, his Brother *Esaias Puffendorff* too, who was Chancellor of the Dukedom of *Bremen*.

(c) In his *Diss. de Republ. irregul.* § 27.

Calamities as noways concerning them, and if at length they lend their Assistance, they do it slowly, and but after long Solicitations.* It were to be wish'd, that daily Experience did not confirm the Truth of this morbid State of the Empire. The Allies and Friends of the Empire complain and are sorry for those Defects : The Enemies of the Empire know them and fear not to insult it, without much smarting for it. Thus in 1707 it was surprising, that after the Enemy had penetrated into the very Heart of the Empire ; it seem'd as if they took no manner of Concern in it, and that they had not only not exerted themselves in assembling sufficient Succours in order to Retrieve the State of Affairs, but spent the whole Summer in bare Deliberations and forming a Resolution to establish a Military Chest of 200,000 Rix Dollars (the Execution of which was still expected) in the Time that the common Enemy had rais'd Contributions of several Millions, which they ought rather to have given voluntarily and cheerfully for their own Defence.*

Q. 7. But is it consistent with the Duty of a good Citizen to expose the Defects of the Constitution ?

* This Instance is now old enough to be mentioned freely ; as to latter Instances, it will be but Discretion to take no Notice of them.

R

A. The

A. The Duty of a good Citizen does not consist in an idle dissembling of Evils that are daily but too obvious and evident, but in a patient bearing of them, till Time and Providence shall bring on a Change for the better.

Q. 8. But what Remedies have we at Hand against the Diseases of the Empire?

A. The aforesaid *Monzambano* furnishes us with the Means to remove these Disorders, but not such as strike at the very Root of the Evil, but only hinder the utter Ruin of the Empire. Hence § 4. c. 7. he recommends the Observation of such Rules as contribute to the Interest of Allies and of confederate Republics; besides, he urges the cultivating of Unanimity, and among States of unequal Strength, the granting an equal Liberty to all.

Q. 9. Is it to be hoped, that there ever will be such a thing as Unanimity in Germany?

A. It may happen one Day or other, that the Princes may begin to grow wiser and exactly regulate their Animosities, by the Rules of right Reason and the Exigency of the common Interest, when they see themselves at the very Eve of being enslaved by an ambitious neighbouring Power; It were to be wisht they would think of it before it is too late. But the Variety of Interests and the Multiplicity of political

itical Views of the several States, has been a great Hindrance to it. Yet sometimes the greatest Necessity and an Enemy in the very Heart of a Country, have sometimes promoted some general Reformation in the Management of the War. And indeed, the more plainly the morbid State of the Empire appears in time of War, the more adviseable it is, that both in the General Diet and in the Courts of the Empire and of the more Powerful States a Reformation be begun as to the Army and Military Chest, lest thro' the neglect of this the Majesty of the Empire (for which the neighbouring Powers were wont in former Days to have so high a Veneration, not only under the Otto's and the Henry's, but likewise under *Charles V.*) may not for the future be expos'd to the Scorn of its neighbouring Enemies, and insulted with Impunity, especially by *France*, which tore *Strasburg*, *Al-sace*, *Lorrain*, *Mentz*, &c. from the Empire.

Q. 10. But what then are the likely Means to provide for the Safety of the Empire in time of War?

A. A sufficient Army, augmented in proportion to the Strength of the Enemy, and furnish'd with all the warlike Necessaries according to the Rules of War. And as Money is the Sine of all Undertakings for the public Good, the Care of the Imperial Treasury is deservedly to be reckon'd among the first

Cares, and the chief Command of the Army (consisting of the Troops of different Princes) to be given to one who is not only a Person of Authority in the Empire, but likewise one who is Powerful both in Men and Money, and skill'd in the Art of War: As by a Decree of the General Diet the chief Command of the Imperial Army was in Queen Anne's Time given to George Lewis Augustus, Elector of Hanover, a Prince renown'd for his Bravery, and considerable by the Forces of his own Territories in the Empire.

Q. 11. But by a particular Reformation of the Defects in the respective Territories of the States, is not the Happiness and Safety of the Public also promoted at the same Time?

A. As on Account of the different Interests a General Reformation can hardly be expected, where it is to be carried on by common Consent, the Empire shall have an Accession of Strength, if even some States would lay to Heart the particular Interest and true Policy of their respective Provinces.

Q. 12. By what Means can this be conveniently done?

A. By endeavouring the Reformation of Church and State, and regulating both for the Purposes of the common Tranquillity and Happiness.

Q. 13. How may the State of the Church be reform'd?

A. If the Power as to things sacred, which is lodged in the Civil Magistrate, be directed in such Manner, as that the Ceremonies and external Worship of God be calculated to excite inward Devotion ; full Liberty of Conscience, as to the Mysteries of Faith, be granted every one, who shall not abuse it to raise Disturbances ; that such as differ in Matters of Opinion be prohibited under severe Penalties to revile and persecute each other ; that the Churches be provided with not only learned, but pious Pastors, and such as are not so much skill'd in Controversy, as instructed in the Laws of the Christian Morality, and by their Life and Conversation show it to the Edification of their Hearers.

Q. 14. How may the State of the Provinces become more flourishing in Matters civil ?

A. By making Trade more flourishing ; by Means of which the Wealth of *England*, *Holland*, nay and of *France*, exceeds that of the rest of *Europe* : And as the Soil of *Germany* produces all the Conveniences of Life, as *Monzambano** and *Beccber*† show to very good purpose, the Princes, who consult the Interest of their respective Provinces, ought

* *de stat. Imp. c. 5. Sect. 7.* † *In a curious Treatise entitled von Auffnahme Deutsche Staate & Lander.*

to see to it, that the Produce of their Country be applied to it's proper uses ; and for that End invite ingenious Artists and Manufacturers from other Countries, by giving them good Encouragement and granting them ample Privileges and an Exemption from the Impositions of the incorporate Trades, and in order to keep the Money in the Country abstain as much as possible from dealing in Foreign Goods.

Q. 15. Are there not a great many other Methods ready at Hand ?

A. There are no doubt of it ; but as these things are usually Part of the privy Counsels of the Courts of Princes, let this general Account suffice by way of Conclusion.

F I N I S.

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